

Response to Comments

Comment Deadline: August 24, 2020

Tentative General Waste Discharge Requirements for Discharges of Waste from Irrigated Agricultural Lands for Dischargers that Are Members of a Coalition Group in Coachella Valley, Riverside (General WDRs)

Tentative Order R7-2020-0026

Comment Letter #	Date	Commenter	Affiliation
TNPBMI-1	August 10, 2020	Darrell Mike	Tribal Chairman, Twentynine Palms Band of Mission Indians
CVILC-2	August 24, 2020	Theresa Dunham	Attorney representing the Coachella Valley Irrigated Lands Coalition
WO-3	August 24, 2020	Kimberly Brown	Vice President, Wonderful Orchards LLC
ICFB-4	August 24, 2020	Brea Mohamed	Executive Director, Imperial County Farm Bureau
IID-5	August 24, 2020	Tina Shields	Manager, Water Department, Imperial Irrigation District
CVWD-6	August 24, 2020	Steve Bigley	Director of Environmental Services, Coachella Valley Water District
RCFB-7	August 24, 2020	Richard A. Schmid, Jr.	President, Riverside County Farm Bureau
LCJA-8	August 24, 2020	Nataly Escobedo Garcia	Water Policy Coordinator, Leadership Counsel for Justice and Accountability

Changes proposed in response to comments are incorporated into the tentative General WDRs. A redline draft with the changes is available upon request and has been provided to all commenters. Please contact Jennie Snyder at (760) 776-8936 or jennie.snyder@waterboards.ca.gov for a copy of the redline document.

Comments provided by the Twentynine Palms Band of Mission Indians came in a letter via the United States Postal Service. Comments provided by all other commenters came in the form of an Adobe PDF Letter attached to an email.

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TNPBMI-1.1	<p>Surface and groundwater quality on the Tribe's Reservation in the Coachella Valley are potentially affected from these discharges. Considering these possible affects, the Tribe believes that the General WDRs included in the proposed order are essential for protecting beneficial uses in receiving waters established by the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) and the Tribe's Federally approved Tribal Water Quality Standards (TWQS).</p>	Comment noted.
TNPBMI-1.2	<p>Under section 518(e) of the Clean Water Act (CWA), the Tribe is treated in a similar manner as a state (TAS) to implement and manage a water quality standards program (CWA Section 303(c)) and issue water quality certifications (CWA Section 401) on Reservation lands in San Bernardino and Riverside Counties. The Tribe asserts this authority over a section of the CVSC that bisects the Reservation (see attachment) in the Coachella Valley. The Tribe understands that irrigation return flows from agricultural land accounts for a portion of the flows in the CVSC. While those irrigation return flows may not be discretely subject to regulation under the CWA, flows in the CVSC consist of a combination of water from multiple sources and, as a tributary to the Salton Sea, is subject to CWA regulation. Therefore, the Tribe has a vital obligation to protect beneficial uses established by TWQS from pollution and to protect water quality on Reservation land.</p>	Comment noted.
TNPBMI-1.3	<p>In addition to surface water, valuable groundwater resources are potentially impacted by irrigated</p>	Comment noted.

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	<p>agricultural lands in the Coachella Valley. Discharges from these lands may contain high levels of salts, nutrients, sediments and pesticides that can degrade groundwater quality. Nitrate levels in groundwater are a principal concern due to its source as a key component in nitrogen-based fertilizers used for agriculture, golf courses, and landscaping in the Coachella Valley. The Coachella Valley is dependent on groundwater, as the local aquifer is the primary source of drinking water for the area. Under the Sustainable Groundwater Management Act (SGMA), the Indio Subbasin, the largest groundwater basin in the Coachella Valley, is considered a medium-priority basin. SGMA requires groundwater basins with medium and high priority designations to be sustainably managed and maintained without causing undesirable results. Included in "undesirable results" is significant and unreasonable degraded water quality. The groundwater quality monitoring and Irrigation Nitrogen Management Plan stipulated in the tentative order are necessary measures to minimize potential groundwater quality degradation and to evaluate the regional effects of irrigated agricultural lands on the local aquifer.</p>	
CVILC-2.1	<p>At the July 9, 2020 workshop, we commented that the proposed enrollment provisions would act as a disincentive to keeping and maintaining growers as members of CVILC, which is necessary for obtaining coverage under the Draft Order. Specifically, the current process is cumbersome, delays application of all Draft Order requirements on members until such time that a Notice of</p>	<p>Comment noted. The Regional Water Board agrees that a viable coalition is essential for implementation of the General WDRs.</p>

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	<p>Applicability is issued, and creates a constant need for growers and CVLIC members to update eNOIs with any change in operation. Collectively, this process will create confusion and may result in CVLIC losing existing members and make it difficult to capture new members that should be in the program.</p> <p>CVILC, unlike other coalition groups within the Colorado River Basin region, is a volunteer organization that is funded completely through dues paid by its members. The Draft Order will greatly expand CVILC's role in administering the irrigated lands program to assist growers in the Coachella Valley, and we fully expect that the current dues structure will be inadequate to implement all of the provisions contained in the Draft Order. For CVILC to successfully perform under the Draft Order, we will need to maintain all existing members and expand membership to include others that are not currently members but subject to the terms of the Draft Order. CVILC is concerned that the proposed eNOI process along with the Notice of Applicability component may unfortunately result in CVILC losing existing members. Further, CVILC does not have the resources to assist growers (large and small) in preparing and submitting eNOI's."</p> <p>To avoid this result, we recommend that the Colorado River Basin Water Board simplify the process by making the following revisions:</p>	

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CVILC-2.1.a	<ul style="list-style-type: none"> Provision A.1 Duty to Apply – Rather than requiring CVILC members to apply for enrollment under the Draft Order (which then means that the order does not apply to them until granted permission via a Notice of Applicability), we recommend that existing CVILC members automatically be covered in the Draft Order. CVILC proposes to accompany this automatic coverage with a process whereby existing members must confirm to CVILC that they are aware of the new order and its new responsibilities and obligations. In turn, CVILC will report member confirmations to the Colorado River Basin Water Board when CVILC submits its first annual membership list on October 30, 2021. To accommodate this change, we propose the following revisions. 	Responses to specific requested changes to the enrollment requirements in the General WDRs are outlined below in responses to comments CVILC-2.1.a.i through CVILC-2.1.a.vii.
CVILC-2.1.a.i	<ul style="list-style-type: none"> Change Duty to Apply to <u>“Obtaining Coverage Under the Order.”</u> 	The title of Section A.1 of the General WDRs has been changed from “Duty to Apply” to “Obtaining Coverage Under the Order.”
CVILC-2.1.a.ii	<p>Revise the second sentence of Provision A.1 to state as follows: Dischargers who are members of a Coalition group are <u>automatically covered</u> required to apply for enrollment under this Order. <u>The Coalition group must obtain a Notice of Confirmation from its members regarding regulatory coverage under this Order within one year from the effective date of this Order, and the Coalition group shall report receipt of the Notice of Confirmation with its first annual membership report due no later than October 31, 2021.</u></p>	<p>The second sentence of Section A.1 has been revised and an additional sentence has been added to read as follows:</p> <p>“Dischargers who are already members of a Coalition Group are automatically covered under this Order. The Coalition Group must obtain a Notice of Confirmation from its members regarding regulatory coverage under this Order within one year from the effective date of this Order, and the Coalition Group shall report receipt of the Notice of Confirmation with its first annual membership report due no later than October 31, 2021.”</p>

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CVILC-2.1.a.iii	<ul style="list-style-type: none"> o Change “Type of Enrollment” to <u>“Requirement for Coverage”</u>. 	<p>The title of Section A.2 of the General WDRs has been changed from “Type of Enrollment” to “Requirement for Coverage.”</p>
CVILC-2.1.a.iv	<ul style="list-style-type: none"> o Remove “Application” from Provision A.3 and refer to this section only as “Electronic Notice of Intent.” o Delete existing Provision A.3 and replace it in its entirety with the following: <u>To complete coverage under these General WDRs, an electronic Notice of Intent (e- NOI) must be completed on GeoTracker. Completion of eNOI’s shall occur as follows:</u> <ul style="list-style-type: none"> a. <u>The Colorado River Basin Water Board will create eNOI’s for members of CVILC from a membership list provided to the Colorado River Basin Water Board from CVILC that includes the necessary information.</u> b. <u>Existing dischargers that are not members of CVILC at the time that the CVILC membership list is provided to the Colorado River Basin Water Board may complete and submit an eNOI directly to GeoTracker, work with the Colorado River Basin Water Board and/or CVILC to complete and submit an eNOI within 1 year of adoption of this Order.</u> c. <u>New dischargers shall submit a completed e-NOI within at least 30 days before the discharge is to commence, unless permission for a later</u> 	<p>The title of Section A.2 of the General WDRs has been changed from “Electronic Notice of Intent / Application” to “Electronic Notice of Intent.”</p> <p>Section A.3 has been removed and replaced with the following:</p> <p>“To complete coverage under these General WDRs, an electronic Notice of Intent (eNOI) must be completed on GeoTracker. Completion of eNOI’s shall occur as follows:”</p> <p>Section A.3.a has been removed and replaced with the following:</p> <p>“The Colorado River Basin Water Board will create eNOIs for members of the CVIL Coalition from a membership list provided to the Colorado River Basin Water Board from the CVIL Coalition that includes all of the necessary information.”</p> <p>Section A.3.b has been removed and replaced with the following:</p> <p>“Existing dischargers that are not members of the CVIL Coalition at the time that the CVIL Coalition membership list is provided to the Colorado River Basin Water Board must complete and submit an eNOI directly to GeoTracker, or work with the Colorado River Basin Water Board and/or the Coalition to complete and submit an eNOI within 1 year of adoption of this Order. A Notice of Confirmation must also be signed by the member and received by the CVIL Coalition within 1</p>

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	<p><u>date has been granted by the Colorado River Basin Water Board's Executive Officer.</u></p> <p>d. <u>eNOIs shall be updated at least once a year if there is a change in property ownership, grower contact information, email contact information, or if the parcels farmed by a CVILC member change.</u></p>	<p>year of adoption of this Order.”</p> <p>Section A.3.c has been removed and replaced with the following:</p> <p>“New dischargers shall submit a completed eNOI within at least 30 days before the discharge is to commence, unless permission for a later date has been granted by the Colorado River Basin Water Board's Executive Officer. A Notice of Confirmation must be signed by the member and received by the Coalition Group prior to any discharge of waste.”</p> <p>Section A.3.d has been removed and replaced with the following:</p> <p>“eNOIs shall be updated at least once a year if there is a change in property ownership, grower contact information, email contact information, or if the parcels farmed by a Coalition Group member change.”</p>
CVILC-2.1.a.v	<ul style="list-style-type: none"> o Delete Provision A.4. Changes in operations will be reflected either through annual CVILC membership lists and/or updated eNOIs. o Adopt new Provision A.4 that states as follows: <u>Submittal of an eNOI does not alone constitute coverage under this Order. Dischargers will only be covered under this Order if they are also members of an approved Coalition Group.</u> 	<p>Section A.4, titled “Transferability,” will be left intact and the following sentence will be added: “Submittal of an eNOI does not alone constitute coverage under this Order. Dischargers will only be covered under this Order if they are also members of an approved Coalition Group.”</p>
CVILC-2.1.a.vi	<ul style="list-style-type: none"> o Delete Provision A.5. The Notice of Applicability provision creates significant difficulties and burdens in ensuring that growers are covered and subject to the terms of the Draft Order. Rather than requiring that a Notice of 	<p>The title of Section A.5 will be changed from “Notice of Applicability” to “Notice of Confirmation.”</p> <p>The text of Section A.5 will be changed to read: “The Coalition Group shall obtain a Notice of Confirmation from each member that has met the requirements for</p>

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	<p>Applicability be issued, we recommend that a Notice of Confirmation be obtained by CVILC from members, and that receipt of this notice be reported on the October 30, 2021 annual membership list. The Colorado River Basin Water Board retains the discretion to terminate any discharger's coverage under the order to require that an individual permit be obtained.</p>	<p>Coalition Group membership and coverage under this Order. The Notice of Confirmation shall include a statement certifying that the member is aware of the requirements of this Order and of the member's responsibility to comply and shall be signed by the member. The Coalition Group shall maintain a copy of each signed Notice of Confirmation and make it available to the Colorado River Basin Water Board upon request. The Coalition Group shall report whether it has received a Notice of Confirmation from each new or existing member in the annual membership report. If the Colorado River Basin Water Board determines that coverage under this Order is not appropriate for any discharger, the Executive Officer will inform the Discharger in writing and may request that the Discharger submit an ROWD to obtain an individual permit for the discharge of waste."</p>
CVILC-2.1.a.vii	<p>o Revise Provision A.6 as follows: Following issuance of the NOA, the Dischargers must provide written notice of the Order and its requirements Discharger's enrollment to any landowner whose parcel has been enrolled is covered by this Order through the Dischargers membership in a third party coalition by an operator under this Order or to an operator who farms a parcel that is covered has been enrolled by a landowners membership in a third party coalition. Confirmation that the Discharger provided this notice must be submitted to the Coalition Group.</p>	<p>Section A.6 of the General WDRs has been revised to read as follows: "Dischargers must provide written notice of the Order and its requirements to any landowner whose parcel is covered by this Order through the Discharger's membership in a Coalition Group or to an operator who farms a parcel that is covered by a landowner's membership in a Coalition Group. Confirmation that the Discharger provided this notice must be submitted to the Coalition Group."</p>
CVILC-2.2	<p>CVILC has further reviewed the Draft Order and has identified several substantive and reporting requirements that need some adjustment to</p>	<p>Regional Water Board staff provided the draft General WDRs to the Coachella Valley Irrigated Lands Coalition (CVILC) for its review in February 2020. CVILC was</p>

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	<p>ensure that the requirement can be fulfilled in a timely manner. We identify these issues and suggest changes accordingly here.</p>	<p>given five weeks, until March 15, 2020, to pre-review the General WDRs before the draft would be released for public review. At the end of the five-week pre-review period, CVILC requested additional time, in response to impacts from COVID-19, to solicit input from their members before the pre-review period ended.</p> <p>Staff met with CVILC and its representatives on April 15, 2020 and May 29, 2020 to discuss issues with the draft General WDRs and adjust deadlines for implementing new requirements. The public review period began on June 25, 2020 and lasted for sixty days until August 24, 2020.</p> <p>CVILC and its members have had a total of over six months to review, comment on, and strategize for compliance with the General WDRs. Compliance deadlines were adjusted during those six months to accommodate potential impacts from COVID-19. Details of how each compliance deadline was revised is included in the subsections below.</p>
CVILC-2.2.a	<p>Provision D.2, Farm Plan – Due to anticipated difficulties in holding large gatherings in early 2021, and perhaps longer, CVILC requests that the Farm Plan requirement be delayed one year, which would mean that the first Farm Plan reports would be submitted by March 1, 2023. This provides CVILC and the Colorado River Basin Water Board sufficient time to educate existing and new members about the new requirements, disseminate templates, assist with completing templates, and receive the information back to CVILC. We anticipate that much of 2021 will be spent educating existing and new members about the Draft Order in its entirety. Attempting to obtain</p>	<p>Please see response to comment CVILC-2.2 above. The deadline for the first Farm Plan submittal was extended from March 1, 2021 to March 1, 2022, upon request by CVILC, during the pre-review period. CVILC has been aware of the requirements of the Farm Plan since the pre-review period began in February 2020. Even when considering the difficulties presented by COVID-19, Regional Water Board staff believe that the existing schedule gives CVILC and its members sufficient time to comply.</p> <p>No changes were made in response to this comment.</p>

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	completed Farm Plans concurrently would be resource intensive, and may create additional confusion.	
CVILC-2.2.b	<p>Provision D.4, Education – Due to COVID-19 and the challenges we all face in holding in person meetings, we request that the requirement for members to participate in an annual outreach and education event become effective starting in 2022. Hopefully by then, large group gatherings will be allowed for CVILC to hold such events. Further, starting with order adoption in the fall of 2020 through 2021, we anticipate that the first year of the order will largely be spent on educating existing and new members about the new order and its requirements, and ensuring that growers become members of CVILC if they are not already. We recommend that the first sentence of Provision D.4 a. be modified as follows: <u>Starting in 2022</u>, Members shall participate in Coalition Group outreach and education events, at least once annually.</p>	<p>Please see response to comment CVILC-2.2 above. CVILC has been providing public education to its members as part of its compliance program for Order R7-2014-0046, <i>Conditional Waiver of Waste Discharge Requirements for Agricultural Wastewater Discharges and Discharges of Waste from Drain Operation and Maintenance Activities Originating in within the Coachella Valley</i> (2014 Conditional Waiver), adopted in June 2014. The only new requirement is that CVILC must now document each member that participates in the education program and report it to the Regional Water Board.</p> <p>The deadline for CVILC to report whether its members fulfilled the annual education event requirement was already extended from April 1, 2021 to July 1, 2022 upon request of CVILC during the pre-review period.</p> <p>Even when considering the difficulties presented by COVID-19, Regional Water Board staff believe that the existing schedule gives CVILC and its members sufficient time to comply. Education and outreach done by CVILC for its members in compliance with the requirements of the General WDRs helps satisfy the member's annual education requirement and should be documented and reported for each participating member.</p> <p>No changes were made in response to this comment.</p>
CVILC-2.2.c	Provision E.7, Education and Outreach – Consistent with the comments provided immediately above, this provision should become	Please see responses to comments CVILC-2.2 and CVILC 2.2.b above.

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	<p>effective starting in 2022. We recommend that the first sentence of Provision E.7.a. be modified as follows: <u>Starting in 2022</u>, the Coalition Group shall conduct education and outreach activities to inform Members of program requirements and water quality problems identified by the Coalition Group or Colorado River Basin Water Board.</p>	
CVILC-2.3	<p>CVILC appreciates adjustments to the Monitoring and Reporting program (MRP) that have already been made due to CVILC's comments on the administrative draft. Upon further review, CVILC has additional comments and requested clarifications.</p>	<p>Please see responses to comments CVILC-2.3.a through CVILC-2.3.e below.</p>
CVILC-2.3.a	<p>Surface Water Quality Monitoring Requirements – The MRP does not clarify if the monitoring requirements are applicability immediately, or after the Colorado River Basin Water Board's Executive Officer approves the updated Surface Monitoring Program Plan, which is due 180 days after order adoption. To avoid confusion, CVILC recommends that surface water monitoring not be required until such time that the updated Surface Monitoring Program is approved. At the very least, we request that the quarterly and semi-annual monitoring requirements start in 2021, which would mean that only fourth quarter sampling and the October 2020 semi-annual events would not occur for 2020. This would provide CVILC time to prepare the updated Surface Monitoring Program without there being a significant gap in obtaining sampling data and information.</p>	<p>The language in the draft General WDRs is intended to convey that the monitoring and reporting plan previously approved for use under the 2014 Conditional Waiver be continued under the General WDRs until a new one has been approved. Section III.A of the MRP provides that the sampling locations from the 2014 Conditional Waiver be used for sampling until the Surface Water Monitoring Program Plan is approved.</p> <p>The following has been added as paragraph 3 in Section III.B of the MRP to provide additional clarity:</p> <p>“As specified in Section V, the CVIL Coalition shall submit an updated Surface Water Monitoring Program Plan that, among other things, evaluates and updates as necessary the list of monitoring constituents and frequencies. Until the approval of the plan, this MRP designates the following minimum surface water sampling constituents and frequencies.”</p>

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CVILC-2.3.b	<p>Fish Tissue Sampling – CVILC opposes the imposition of fish tissue analysis on the irrigated lands program. We fail to see the value and purpose in the requirement for fish tissue testing – especially as it relates to this program. Such a requirement is not the responsibility of growers and operators that are in operation today. The Draft Order is designed to regulate current irrigated agricultural activities that may impact water quality – not legacy pollutants from the past. For example, DDT was banned from agricultural uses in 1972, Dieldrin in 1987 and Toxaphene in 1990. Further, there are many other sources associated with these legacy pesticides besides agriculture. PCBs are not related to agricultural uses. Fish tissue analysis for pesticides that have been banned for decades and PCBs that are unrelated to agriculture are not the responsibility of current operators. Thus, the Colorado River Basin Water Board has no basis or justification for imposing fish tissue analysis on growers subject to the Draft Order. CVILC recommends that this requirement be deleted in its entirety. Fish tissue analysis should be conducted by state agencies and programs such as the State Board’s Surface Water Ambient Monitoring Program (SWAMP) – not as a requirement in the irrigated lands program. At the very least, this provision should be delayed until 2022, and CVILC should have flexibility for meeting this requirement by coordinating and relying on other programs that may conduct fish tissue sampling in or near the area where such sampling is required under the MRP</p>	<p>The General WDRs regulates the discharges of wastes that include legacy pesticides. Historically, these pesticides were used extensively in the United States for agricultural and domestic pest control purposes, but are no longer used. Once in the environment, these pesticides are slow to degrade and have a tendency to attach to soil particles. They are transported from points of application into receiving waters, mainly by hydrologic processes.</p> <p>Regional Water Board staff’s analysis shows that agricultural fields are the main source of DDT and toxaphene in the Coachella Storm Water Channel. DDT and toxaphene are present in the soils of agricultural fields as a result of past usage and/or areal deposition over time. As the fields are irrigated, soils containing the organochlorine (OC) pesticides are eroded, discharged, and then deposited into state waters, such that the Coachella Storm Water Channel beneficial uses are impaired.</p> <p>The responsibility of collecting data and conducting monitoring for the General WDRs lies with the agricultural dischargers in the Coachella Valley. The coalition group represents the interests of its members (agricultural dischargers) and assists its members by performing several tasks for them, including regional monitoring.</p> <p>The state fees paid by coalition groups on behalf of members are used to support state staff that manage the program and cannot be used to do monitoring. The monitoring of fish tissue can be contracted out with qualified personnel with the required certifications and permits. There are several qualified personnel with experience in the Coachella Valley area like the</p>

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		<p>California Department of Fish and Wildlife.</p> <p>The requirement to perform fish tissue monitoring is a new requirement and should not be carried out until the Surface Water Monitoring and Reporting Plan and Quality Assurance Program Plan are revised and approved by the Colorado River Basin Water Board's Executive Officer. The requirement to perform fish tissue sampling and analysis has been delayed until fall 2022.</p>
CVILC-2.3.c	<p>Drinking Water Supply Well Monitoring – As proposed, drinking water supply well monitoring would essentially need to occur in 2021. To allow sufficient time to educate growers of the new requirements in the Draft Order, we request that the initial sampling requirement be adjusted so that the first sample results must be collected and analyzed in 2022, and reported on GeoTracker no later than March 1, 2023. This will provide sufficient time to educate growers about this new requirement through 2021, and implementation through 2022.</p>	<p>Please see responses to comments CVILC-2.2 through CVILC-2.2.c above.</p> <p>The deadline for the first drinking water well monitoring results was extended from March 1, 2021 to March 1, 2022, upon request of CVILC, during the pre-review period. CVILC has been aware of the requirements for drinking well monitoring since the pre-review period began February 2020.</p> <p>A Notice of Confirmation, confirming the presence or absence of drinking water wells and certifying that the member is aware of the requirements of this Order, will be submitted by each member to the CVILC within one year of adoption of the General Order. CVILC will report its receipt of the Notice of Confirmation and the presence or absence of on-farm drinking water wells to the Colorado River Basin Water Board its first annual membership report to be submitted by October 31, 2021.</p> <p>The existing schedule allows at least four months after verifying that the Member is aware of the monitoring requirement for drinking well owners to collect a sample and have it analyzed. Considering the potential severity and urgency of health issues associated with drinking</p>

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		<p>groundwater with high concentrations of nitrates, it would not be prudent to postpone the drinking water sampling requirements any longer than necessary. Regional Water Board staff believe that the existing schedule gives CVILC and its members enough time to comply.</p> <p>No changes were made in response to this comment.</p>
CVILC-2.3.d	<p>Drinking Water Supply Well Monitoring – The draft MRP allows for the cessation of drinking water sampling if sufficient replacement water is provided, which may include installation of point of use or point of entry systems. However, samples are required to be collected prior to any well head treatment. These provisions conflict and need to be reconciled. If there is treatment for nitrate, samples should be allowed to be collected after the point of treatment.</p>	<p>MRP Section IV.B requires coalition members to sample all wells that provide drinking water and are located on their property. There is no exclusion for supply wells that provide treatment before water it is made available for drinking. In cases where treatment apparatus is installed, the samples shall be collected prior to any treatment in accordance with Section IV.B of the MRP.</p> <p>MRP Section IV.B.3 allows for cessation of monitoring only if the well is taken out of service or no longer provides drinking water. Installation of a point of use system does relieve members of the requirement to monitor for nitrates and notify well users if an exceedance, as defined in the General WDRs, occurs. There is no conflict with requiring testing prior to well head treatment, because well users should be informed about the state of their raw drinking water, particularly in case well head treatment or other treatment methods fail. However, nothing precludes the member from also including in the exceedance notification information that well head treatment is being provided and sampling results from after well head treatment.</p> <p>No changes were made in response to this comment.</p>
CVILC-2.3.e	<p>Annual Submittal of Management Practice (Farm Plan) Data – Members are required to report their</p>	<p>Regional Water Board staff agree that one month may not be enough time to compile and submit the first</p>

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	<p>Farm Plan data to CVILC by March 1, 2022. Per the draft MRP, CVILC would then be required to report this information to the Colorado River Basin Water Board by April 1, 2022. One month is not a sufficient period of time to compile all of the Farm Plan data, assign anonymous identifiers, properly format and submit the information to the Water Board. We request that this reporting deadline be changed from April 1 to July 1, starting in 2023 and annually thereafter.”</p>	<p>annual compilation of Farm Plan data required by MRP Section VI.C. It is reasonable to allow some additional time by extending the deadline for submittal of the first report to July 1, 2022. However, it is not reasonable to consistently allow a six-month gap between the time the data is collected and the time it is compiled and reported to the Regional Water Board. Further, the coalition could impose an earlier deadline for submittal of Farm Plan data by its members to the coalition if the turnaround time proves to be too burdensome.</p> <p>The first phase of MRP Section VI.C has been revised to read, “By July 1, 2022, and by April 1 annually thereafter,…”</p>
CVILC-2.4	<p>“Finding 2 states that Figure 1 depicts the Coachella Valley agricultural area. Unfortunately, Figure 1 is fairly vague and does not clearly show the agricultural area subject to the Draft Order.</p>	<p>An aerial photograph showing the approximate location of Coachella Valley irrigated lands has been added as Figure 2 of the draft General WDRs.</p> <p>The third sentence of Finding 2 has been revised to read, “The Coachella Valley agricultural area is depicted in Figures 1 and 2.”</p>
CVILC-2.5	<p>Finding 7 states that the Draft Order regulates crops and pastures that are irrigated for commercial purposes. With respect to pastures, what defines a pasture as being used for commercial purposes? How does this impact “horse properties” that may be commercial operations rather than just for persona use?</p>	<p>Pastures that meet at least one of the criteria listed in Finding 7 are irrigated for commercial purposes and covered under the draft General WDRs. However, please note that there are several exceptions to this rule in Finding 11, including for discharges from Irrigated Agricultural Lands that are adequately regulated under other Regional Water Board regulatory programs, such as concentrated animal feeding operations (CAFOs), cannabis cultivation, parks, golf courses, and cemeteries. “Horse properties” could potentially fall under the exception for CAFOs. If there is a question as to whether a particular facility has a duty to enroll under the General WDRs, please consult the Regional Water</p>

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CVILC-2.6	Findings 29-34 – In addition to the natural hydrological setting, within the Coachella Valley Planning Area there is the Thomas E. Levy Groundwater Replenishment Facility, which is designed to add approximately 40,000 acre feet of water per year to the groundwater aquifer.	<p>In response to this comment, a new Finding 35 has been added to include the Thomas E. Levy facility as a hydrologic feature, as follows:</p> <p>“In addition to the natural hydrological setting in the Coachella Valley Planning Area, the Thomas E. Levy Groundwater Replenishment Facility began percolating imported Colorado River water into eastern subbasin of the Coachella Valley’s aquifer in June 2009. The replenishment facility is designed to add approximately 40,000 acre-feet of water per year into the groundwater aquifer.”</p>
CVILC-2.7	Finding 48 – Construction of the Coachella Valley subsurface drainage system actually began during 1950, and took 28 years to complete.	<p>In response to this comment, the first sentence of Finding 48 (now finding 49) has been revised to read as follows: “Construction of the Coachella Valley subsurface drainage system to reclaim land that was too saline to use beneficially began in 1950 and took 28 years to complete.”</p>
WO-3.1	As currently drafted, the expanded administration and reporting requirements will cause an undue burden and increase costs to growers and the CVILC without a marked improvement in the information and reporting obtained by the Board. We encourage the Board to modify the enrollment process as outlined in the CVILC Comment Letter.	<p>Regional Water Board staff have revised the requirements for coalition members to submit eNOIs. Please see the responses to comments CVILC-2.1.a.i through 2.1.a.vii.</p>
WO-3.2	Several requirements are substantive changes to the existing program and will require significant education by the CVILC to existing and new members. With limitations on gatherings and public meetings, social distancing requirements and other market and	<p>Please see responses to comments CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC-2.3.c.</p>

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	employment disruptions to the agricultural sector due to Covid-19, additional time should be given to ensure that the new requirements in Provisions D.2, D.4 and E.7 can be fulfilled in a safe, informed and timely manner. The specifics of these requirements and recommended adjustments are detailed in the CVILC Comment Letter.	
WO-3.3	We appreciate the Board's revisions to date on several aspects of the Monitoring and Reporting program (MRP), however, we request that the Board consider revising the deadlines for the Drinking Water Supply Well Monitoring initial sampling submittal date and the Annual Submittal of Management Practice (Farm Plan) Data to no later than March 1, 2023 and July 1, 2023, respectively, to allow sufficient time for growers to comply.	Please see response to comment CVILC-2.3.
ICFB-4.1	ICFB appreciates the opportunity to provide comments on Tentative Order R7-2020- 0026, General Waste Discharge Requirements for Discharges of Waste from Irrigated Lands for Dischargers that are Members of a Coalition Group in the Coachella Valley (Tentative Order). ICFB supports all comments by the Coachella Valley Irrigated Lands Coalition (CVILC) submitted on August 24, 2020. We have also worked with senior counsel at California Farm Bureau Federation, Kari Fisher, and respectfully offer the following additional remarks.	Comment noted.
ICFB-4.2	Definitions – Dischargers To be consistent with Water Code section	The Porter-Cologne Water Quality Control Act designates the State and Regional Water Boards as the

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	<p>13260(a)(1), which states: "A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system," the definition of "Discharger(s)" should be revised to state:</p> <p>"Discharger(s) means the owner(s) or operator(s) of Irrigated Agricultural Lands who discharge have the potential to discharge, or propose to discharge waste, which could directly or indirectly affect the quality of waters of the state."</p>	<p>state agencies with primary responsibility for water quality control in California and obligates them to address all discharges of waste that could affect the quality of the waters of the state, including potential nonpoint sources of pollution.</p> <p>Nonpoint source pollution control plans specifically target potential discharges of waste. They rely on management practices that minimize or even eliminate the potential for wastes to enter surface waters or groundwaters. The State Water Board's Nonpoint Source Policy¹ specifically notes that "the most successful control of nonpoint sources is achieved <i>by prevention</i> or by minimizing the generation of [nonpoint source] discharges." (NPS Policy, p. 7 [emphasis added].) There does not have to be an intent to discharge to be a threat to water quality or to be regulated under a nonpoint source control plan.</p> <p>Additionally, Water Code section 13260(a)(1) is not a definition of "discharger"; rather, it is a criterion that requires the submission of a report of waste discharge to the appropriate regional water board. It does not limit regional water boards from regulating or investigating situations not described in section 13260(a)(1).</p> <p>No changes have been made in response to this comment.</p>
ICFB-4.3	<p>Definitions—Compliance Program</p> <p>To be consistent with Water Code section 13360(a), which prohibits the dictation of management practices, this definition should be</p>	<p>The language in Finding 17 was not intended to convey that the Regional Water Board is dictating specific management practices for dischargers to implement. For clarity, Finding 17 has been revised to read as</p>

¹ "Nonpoint Source Policy" means the State Water Board's Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program dated May 20, 2004. Available at <https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf> (as of November 5, 2020).

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	<p>revised to make it clear that a compliance program cannot specify potential management practices to be implemented:</p> <p>“Compliance Program” means a nonpoint source pollution control program that specifies potential management practices and monitoring and reporting requirements that will be implemented to ensure compliance with this Order.</p>	<p>follows:</p> <p>““Compliance Program” means a nonpoint source pollution control program that requires the implementation of management practices and specifies the monitoring and reporting activities that will be performed to demonstrate compliance with this Order.”</p>
ICFB-4.4	<p>Economics/Costs</p> <p>As we have expressed in past comments to WDRs, regulatory pressure and associated costs are a source of increasing concern to the California agricultural industry. We believe that the cost estimates described are understated/low, especially for INMP costs and groundwater monitoring. It is inappropriate to only consider costs for a 5-year time frame since the general waste discharge requirements have an indefinite timeframe. Thus, the requirements, and therefore, the associated costs, will extend beyond five years.</p>	<p>The Regional Water Board has invited CVILC several times to provide more accurate cost estimates if it believes the estimated costs in the draft General WDRs are inaccurate; to date, no such estimates have been provided, nor does this comment provide any.</p> <p>The annual costs that are estimated in the economic analysis included in Attachment A are expected to continue indefinitely throughout the life of the program. One-time costs, such as developing a trend monitoring workplan or creating reporting templates, do not occur every year but will still be paid for by members of the Coalition Group. To capture one-time costs in the annual cost estimate, one-time costs were annualized, or spread out, over five years.</p> <p>As stated in paragraph 3 of Attachment A Section III, “One-time costs will be estimated separately from the recurring annual costs of the Order. For the purposes of this cost analysis, the one-time costs of compliance are expected to occur within and throughout a five-year implementation period. All one-time compliance costs, despite what year they will be expended, will be totaled and annualized over the first five years of compliance into an annual per acre per year cost.”</p>

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		<p>The method used to capture one-time costs in the annual cost estimate is equivalent to adding up all the one-time costs, dividing them by five, and adding them to the costs that occur every year.</p>
ICFB-4.5	<p>Receiving Water Limitations</p> <p>Clarifying language should be added to the end of the surface receiving water limitations and groundwater receiving water limits, as shown below in underline.</p> <ol style="list-style-type: none"> 1. Surface Receiving Water Limitations <ol style="list-style-type: none"> a. Wastes discharged from Irrigated Agricultural Lands in Coachella Valley shall not cause or contribute to an exceedance of applicable water quality objectives for surface waters, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance <u>for surface waters.</u> 2. Groundwater Receiving Water Limitations <ol style="list-style-type: none"> a. Wastes discharged from Irrigated Agricultural Lands in the Coachella Valley shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance <u>in the underlying groundwater.</u> 	<p>Any conditions of pollution or nuisance that are caused or contributed to by discharges covered under the draft General WDRs are prohibited; for example, offensive nuisance odors stemming from surface waters could be included in this prohibition. (See generally Wat. Code, § 13050(m).) The additional language suggested in the comment is therefore too limiting. Moreover, these exact same receiving water limitations were approved of by the State Water Board in the ESJ Order² at pages 15 and 16.</p> <p>No changes have been made in response to this comment.</p>
ICFB-4.6	Management Practices	<p>Section D.1 of the draft General WDRs is consistent with applicable case law, even though it is not a direct</p>

² “ESJ Order” refers to State Water Board Order WQ 2018-0002, *In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group*, dated February 7, 2018. Available at: <https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf> (as of November 5, 2020).

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	<p>The section on Management Practices must be revised to be consistent with case law. Regional Board may pull from sections of the ESJ WDR which states the following:</p> <p>“This Order implements the Basin Plan by requiring the implementation of management practices to achieve compliance with applicable water quality objectives and requiring the prevention of nuisance. The Order requires implementation of a monitoring and reporting program to determine effects of discharges on water quality and the effectiveness of management practices designed to comply with applicable water quality objectives.” (ESJ WDR, p. 8, ¶ 25)</p> <p>“Members who are subject to this Order shall implement water quality management practices, as necessary, to protect water quality and to achieve compliance with applicable water quality objectives. Where applicable, the implementation of practices must be in accordance with the time schedule contained in an approved Groundwater Quality Management Plan or Surface Water Quality Management Plan.” (ESJ WDR, p. 21, IV.A.3 [The reference to “Groundwater Quality Management Plan or Surface Water Quality Management Plan” would need to be changed to reference timelines and Water Quality Restoration Plans as applicable under the Coachella Valley WDR].)</p>	<p>quote from the ESJ Order and accompanying WDRs.</p> <p>No changes have been made in response to this comment.</p>
ICFB-4.7	<p>Farm Plan Submittals</p> <p>The frequency of farm plan submissions shall be changed from annually to every five years to be in</p>	<p>Preparation and submittal of annual Farm Plans to the Coalition Group were required by the 2014 Conditional Waiver. However, the specific information provided in</p>

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	<p>line with statements made by the State Water Board when reviewing the ESJ WDR:</p> <p>“As such, they constitute an essential component of the General WDRs. However, we find that annual submission of the Farm Evaluations is necessary only when water quality problems indicate the need for iterative updating of implemented management practices. Based on the experience of the East San Joaquin Water Quality Coalition to date, most implemented management practices otherwise remain fairly stable from year to year.” (SWRCB Order WQ 2018-0002 p. 29.)</p> <p>The provision would be revised to read:</p> <p>“Members shall submit the individual Farm Plan to the Coalition Group. An updated Farm Plan must be prepared and submitted to the Coalition Group by March 1, 2022 and by March 1 annually every five years thereafter. The Executive Officer may require more or less frequent submission of a Farm Evaluation for any Member or group of Members if the Executive Officer makes a determination that the change in frequency is warranted.”</p>	<p>them has never been reviewed by Regional Water Board, except in a very general summary of how often each management practice has been used.</p> <p>The new precedential requirement to submit grower-specific field-level management practice implementation data to the regional water boards will, upon adoption of the draft General WDRs, provide the Regional Water Board with its first insight into the patterns of management practice implementation in the Coachella Valley. Regional Water Board staff consider the submittal of annual Farm Plans to be necessary to establish whether most implemented management practices remain fairly stable from year to year in the Coachella Valley as they do in the Central Valley.</p> <p>Further, the ESJ Order gives the Regional Water Board considerable flexibility to determine the appropriate frequency of submission of the Farm Plan. The ESJ Order on page 29 states, “The requirement for submission by all growers of management practice implementation information shall be precedential for irrigated lands regulatory programs statewide, however, the regional water boards shall continue to have discretion as to the form and frequency of such submissions.”</p> <p>No changes have been made to in response to this comment.</p>
ICFB-4.8	<p>Inspection and Entry</p> <p>Provision F, 6 is inconsistent with Water Code Section 13267 and hampers private property rights. Water Code section 13267(c) clearly states that any inspection “shall be made with the consent of the owner or possessor of the facilities</p>	<p>As written, the language of Section F.7 of the draft General WDRs is fully consistent with the requirements of Water Code section 13267(c). The reference to the need to present “other documents as may be required by law” encompasses the need to provide a warrant if consent to enter is refused. Staff notes that the language is standard and used in almost every permit</p>

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	<p>or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.” As currently drafted, this provision ignores Section 13267 and attempts to allow inspections of private property at any time without notice to or consent from the landowner or obtaining a necessary warrant. The provision should be revised to read: “Consistent with Water Code section 13267(c), the Colorado River Basin Water Board or its authorized representatives, upon presentations of credentials at reasonable hours, may inspect the facilities of persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the Discharger is complying with the conditions of this Order. The inspection shall be made with the consent of the Discharger or owner of the facilities, or if consent is withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with section 1822.50). However, in the event of an emergency affecting the public health and safety, an inspection may be performed without the consent or the issuance of a warrant.”</p>	<p>issued by the Regional Water Board. Further, the same language was used in the other orders regulating irrigated agricultural lands in Bard Valley and Palo Verde Valley and Mesa.</p> <p>Consistent with Water Code section 13267(c), Regional Water Board staff would not enter an enrolled property without consent, unless the Regional Water Board staff first obtains a warrant.</p> <p>No changes are proposed in response to this comment.</p>
IID–5.1	<p>The IID shares many of the concerns submitted by the Coachella Valley Irrigated Lands Coalition and the Imperial County Farm Bureau in their August 24, 2020 letters on this matter. One item of notable concern is the Electronic Notice of Intent/Application process which must be completed by all dischargers prior to obtaining regulatory coverage. CVILC has requested for</p>	<p>Please see responses to comments CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC-2.3.c..</p>

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	support services to be allowed in the enrollment of growers/owners, or for the Regional Board to provide enrollment services. Ensuring the development of an accurate database is a vital component of this program, and due to the fact that some dischargers may be lacking in computer proficiency or have language communication challenges, e- NOI support may be critical to this program's success.	
CVWD 6.1	CVWD is writing in support of the written comments submitted by the Coachella Valley Irrigated Lands Coalition (CVILC). CVILC is the only existing coalition authorized to represent members under the Tentative Order. The Tentative Order greatly expands CVILC's role and responsibilities in administering the Irrigated Lands Regulatory Program (ILRP) to assist growers in the Coachella Valley. Providing the greatest degree of flexibility with the enrollment process and monitoring and reporting provisions, as requested by CVILC, is critical to ensure broad and timely participation by growers, large and small, and the success of the program.	Comment noted.
CVWD-6.2	CVWD supports the following requests made by CVILC which will help maintain an uninterrupted and high level of participation needed for a viable coalition, allow for greater flexibility to phase in the many substantial new provisions of the Tentative Order, and address concerns about deadlines for items that require in person meetings or outreach that may not be possible under COVID-19 restrictions.	Comment noted. Please see responses to comments CVWD-6.2.a and CVWD-6.2.b directly below.
CVWD-6.2.a	Rather than requiring CVILC members to apply	Please see responses to comments CVILC-2.1.a.i

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	for enrollment under the Draft Order, current coalition members should be automatically enrolled in the Tentative Order.	through 2.1.a.vii above.
CVWD-6.2.b	Allow for modest delays to the Farm Plan, Drinking Water Supply Well Monitoring, and Education Outreach requirements, recognizing that these provisions are new to the Coachella Valley, and will require procuring additional staffing resources and time to educate the growers. Due to the challenges presented by COVID-19, even the foundational outreach that will be needed to implement these provisions will present considerable challenges for the foreseeable future.	Please see responses to comments CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC-2.3.c.
CVWD-6.3	Finally, CVWD agrees with CVILC that fish tissue analysis for pesticides that have been banned for decades and banned PCBs that are not linked to agriculture are not the responsibility of current operators, and are unrelated to current irrigated agricultural activities regulated by this Tentative Order. As we have previously commented, fish tissue sampling is highly technical, requires permits, and, if the sampling will occur anywhere where there is the possibility of trapping co-occurring CESA-listed and/or Fully Protected species, requires consultation with California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Services (USFWS). It is for these reasons that this type of monitoring is almost exclusively performed by regulatory agencies. While there are certainly benefits to gathering data to support delisting waters that are currently on the 303(d) list for these legacy compounds in the Coachella Valley	Please see response to comment CVILC-2.3.

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	<p>Stormwater Channel, placing the significant permitting and technical burden on the coalition is not the right approach. This type of monitoring would be best achieved regionally through a State monitoring program like SWAMP, in consultation with CDFW and USFWS.</p>	
CVWD-6.4	<p>CVWD provided CVILC monitoring, reporting, and other technical support under the previous Conditional Waiver, Order R7-2014-0046. While CVWD will continue to provide this type of support, the Tentative Order has many new substantive administrative and reporting provisions related to irrigated agricultural practices that are beyond CVWD's technical scope and CVILC's current resources. CVILC needs enrollment flexibility to remain a viable coalition and more time on certain provisions to grow into the new requirements in a reasonable, phased approach. The Regional Board should provide the requested flexibility, recognizing the value that CVILC provides to growers in the Coachella Valley and reduced regulatory burden compared to the alternative individual permitting and reporting process.</p>	<p>Comment noted.</p>
RCFB-7.1	<p>On behalf of the farmers and ranchers of Coachella Valley, the Riverside County Farm Bureau is especially concerned about the provisions of the tentative order requiring an eNOI by the owners/operators of agricultural lands. Among the many issues are a) the limited, or non-existent, internet service in portions of the eastern Coachella Valley, b) the lack of growers internet "sophistication" required to complete forms in GeoTracker, and c) language difficulties in our</p>	<p>Please see responses to comments CVILC-2.1.a.i through 2.1.a.vii.</p>

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	<p>multilingual community. We are aware that CVILC has limited financial resources to employ consultants to assist growers to comply, when the coalition is already taxed with the requirements of extensive monitoring, testing and reporting, all of which will require expertise beyond that of its volunteer board.</p>	
RCFB-7.2	<p>Realistically, while there are large farming operations in the eastern Coachella Valley, there are also many small growers, who already face extreme economic issues, and the burden of the General Order will fall heavily upon them; the eNOI requirements seem unnecessarily onerous. Add to this the problems caused by the COVID pandemic, not only making everyday life more difficult, but limiting their access to educational opportunities.</p>	<p>Please see responses to comments CVILC-2.1.a.i through CVILC-2.1.a.vii, CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC-2.3.c.</p>
RCFB-7.3	<p>We ask you to reconsider requiring eNOIs and allowing members of CVILC to enroll through coalition membership. Additionally, we hope you can create flexibility into your schedule to take into consideration the difficulties our growers face with the many new reporting requirements and the limitations on educational opportunities when many of them do not have access to internet learning.</p>	<p>Please see responses to comments CVILC-2.1.a.i through CVILC-2.1.a.vii, CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC-2.3.c.</p>
RCFB-7.4	<p>The Farm Bureau and the agricultural industry value the standards set for safe food and water. We want to work with you to maintain our food chain, while continuing to value to the importance of the family farm to our local communities and workforce, as well as to the economic well-being of California and the United States.</p>	<p>Comment noted.</p>

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LCJA-8.1	<p>According to the Tentative Order, there has only been one workshop in which the General WDRs was presented to the public. This means that there are only two opportunities, the July 9, 2020 workshop and the September 3, 2020 adoption hearing, for public input. Further, there is no summary in the Tentative Order of input received at the workshop and whether it was incorporated into the General WDRs.</p> <p>Public participation is a critical component of the protection of water quality. As such we make the following recommendations:</p> <ul style="list-style-type: none"> • Conduct at least two additional workshops to better inform the public about what is in the General WDRs and receive input. • Translate material and provide translation services at all public workshops and forums. • Conduct workshops at times that are accessible for the public, such as evenings or weekends. • Work with local community-based groups to create and implement a successful public engagement plan for all future CV-IRLP activities. 	<p>The Regional Water Board has already gone beyond the legal requirements for public notice and review. For adoption of waste discharge requirements, a 30-day public comment period is required prior to a single adoption hearing by the Regional Water Board. (Wat. Code, § 13167.5; see generally Wat. Code, § 13223 [the Board must issue waste discharge requirements]; Gov. Code, § 11122.5 [the Board must hold publicly noticed meetings].)</p> <p>In this case, the Regional Water Board provided a 60-day public comment period and held a public workshop at the July 9, 2020 Board meeting. Members of the public and stakeholders will have further opportunity to comment on the draft General WDRs at the November 12, 2020 Board meeting.</p> <p>Please note that translation services are available for all Board meetings upon request, and all Board meeting agendas are also posted in Spanish. Due to limited resources, translation of many materials such as the draft General WDRs itself is not available.</p> <p>The Regional Water Board plans to proceed with consideration of adoption of the draft General WDRs at a public hearing on November 12, 2020.</p>
LCJA-8.2	<p>We are very concerned that the Regional Board is making a policy choice that will impact groundwater quality for years and potentially decades with outdated, inadequate and inaccurate data.</p>	<p>Comment noted. Please see responses to comments LCJA-8.2.a through 8.2.c below.</p>

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LCJA-8.2.a	<p>First, we note that the Tentative Order and General WDRs appear to rely solely on a 2007 USGS Groundwater Ambient Monitoring and Assessment (GAMA) program study for groundwater quality data. (pp. A-6 - A-7.) This study took place thirteen years ago, and tested very few wells in the Coachella Valley. Only eleven test results are summarized in the General WDRs, with one nitrate exceedance and one elevated result below the water quality objective. While this study is clearly relevant, and shows some cause for concern given that nearly 20% of the results show elevated nitrate levels, it clearly does not allow for a complete assessment of the current state of groundwater quality in the Coachella Valley.</p>	<p>The Groundwater Ambient Monitoring and Assessment (GAMA) program study conducted by the United States Geological Survey (USGS) in 2007 is a highly peer-reviewed and widely available reference that is still relevant for providing a spatial assessment of groundwater throughout the Coachella Valley.</p> <p>The 2007 GAMA study was referenced in Section II.B of Attachment A – Information Sheet to provide background information and an overview of known groundwater conditions in the area addressed by the General WDRs. The results of the 2007 GAMA study were not used to draw conclusions about possible impacts of irrigated agriculture on groundwater in the Coachella Valley. Staff of the Regional Water Board agree that the results of the 2007 GAMA study cannot form a complete assessment of the current state of groundwater quality in the Coachella Valley.</p> <p>In response to this comment, a new paragraph will be added to the 2007 GAMA study discussion in Section II.B of Attachment A – Information Sheet, as follows:</p> <p>“The 2007 GAMA study described above is meant to provide background information and an overview of known groundwater conditions in the area addressed by these General WDRs. The results of the 2007 GAMA study do not provide a sound basis from which to draw conclusions about possible impacts of irrigated agriculture on groundwater in the Coachella Valley. A more complete assessment of the current state of the groundwater quality in Coachella Valley is needed and one of the reasons groundwater trend monitoring is now required by these General WDRs.”</p>
LCJA-8.2.b	<p>Moreover, the Tentative Order states that “there are approximately 14 domestic wells, 88</p>	<p>The information provided in Finding 14 of the General WDRs is aimed at approximating the number of drinking</p>

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	<p>municipal wells, and 8 irrigation/industrial wells that might provide drinking water in Coachella Valley agricultural area.” (p. 7.) This appears to be a significant undercount of domestic and municipal wells based on our experience working with communities on drinking water issues in the area, as well as based on the Department of Water Resources’ well completion report map application.¹ Depending on the definition of “municipal wells,” it also fails to account for state small water systems and public water systems that do not serve municipalities. We note that a Woodward and Curran study for Coachella Valley Water District dated June 18, 2018 identified ninety-nine mobile home parks served by small water systems in the Coachella Valley. While this study does not identify all of the numerous unpermitted mobile home parks in the Coachella Valley, it does clearly demonstrate that there are more than 14 domestic and 88 municipal wells.²</p>	<p>water wells located on Irrigated Agricultural Lands, not all of the drinking water wells in the entire Coachella Valley. The information included is an approximation or best estimate, derived from California’s GAMA information system, of the number of wells that “might provide drinking water.” It is not intended to be an exact accounting of the number of drinking water wells that exist in the area addressed by the General WDRs. It is entirely feasible that different sources of information, well criteria, and/or project area boundaries could lead to different approximations of the number of groundwater wells on Irrigated Agricultural Lands.</p> <p>The information in Finding 14 is intended to describe the hydrologic setting in the area addressed by the General WDRs. It was not used to develop any of the waste discharge requirements in the General WDRs or to draw conclusions about the possible impacts from irrigated agriculture on drinking water receptors.</p>
LCJA-8.2.c	<p>The Regional Board must proactively and quickly improve its understanding of water quality in the Coachella Valley and update its understanding of the drinking water wells that may be impacted by agricultural discharges before making policy choices that will impact water quality and access to drinking water. At a minimum, the Regional Board must correct inaccuracies based on currently available data, and commit to update the General WDRs in reaction to more current water quality data as it becomes available.”</p>	<p>Comment noted.</p>
LCJA-8.3	<p>The General WDRs do not presently set any enforceable limit on nitrogen loading or discharge of nitrate to receiving water. The General WDRs</p>	<p>The Regional Water Board does set enforceable limits on nitrogen discharges through the Receiving Water</p>

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	<p>do state that “[w]astes discharged from Irrigated Agricultural Lands in the Coachella Valley shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance.” (p. 20.) However, this general prohibition does not ensure that the General WDRs are enforceable against individual dischargers that apply excessive nitrogen to their fields and/or that discharge nitrate to the receiving water in a way that causes or contributes to an exceedance of water quality objectives.</p> <p>The Regional Board should look to the Central Coast Regional Board’s draft Agricultural Order 4.0.3. The draft Order, if adopted, would set both fertilizer nitrogen application limits and discharge targets and limits. While we do not endorse the specific limits and targets in the draft Order, or the timelines for implementation, we do support the approach to setting enforceable limits and targets for both loading and discharges.</p> <p>To comply with the Porter-Cologne Water Quality Control Act, the Antidegradation Policy and the Nonpoint Source Policy, the Regional Board must set enforceable application and discharge limits to prevent exceedance of the nitrate water quality objectives.</p>	<p>Limitations found in Section C of the General WDRs.</p> <p>Importantly, the ESJ Order did not establish effluent limitations for nitrogen or enforceable nitrogen targets, and in fact, stated that establishment of such limitations would be premature. While the ESJ Order requires the development of multi-year nitrogen applied/removed (A/R) ratios for crops, the State Water Board expressly noted,</p> <p>“It is premature at this point to project the manner in which the multi-year A/R ratio target values might serve as regulatory tools. That determination will be informed by the data collected and the research conducted in the next several years. If we move forward with a new regulatory approach in the future, we expect to do so only after convening an expert panel that can help evaluate and consider the appropriate use of the acceptable ranges for multi-year A/R ratio target values in irrigated lands regulatory programs statewide.”</p> <p>The Central Coast Draft Agricultural Order 4.0 has not been adopted by that Board and in any case is not precedential for the Regional Water Board. Consistent with the precedential direction in the ESJ Order, the Regional Water Board believes that it is premature to include any kind of limitations on nitrogen loading in the draft General WDRs, particularly before the multi-year A/R ratio target values have even been developed.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.4	The General WDRs does not reflect active engagement in water quality protection efforts.	Comment noted. Please see response to comments LCJA-8.4.a and LCJA-8.4.d.vii below.

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	<p>There are several issues with proposed requirements included but not limited to overly-general requirements, attenuated timelines, and (as noted above) the lack of enforceable limits on nitrogen loading.</p>	
<p>LCJA-8.4.a</p>	<p>Management Practices Section (1)(a)(2) states “when effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality objectives, Members must implement improved management practices.”⁴ It is unclear how it will be determined when implemented management practices are not being effective. Lack of clarity in how this will be determined could result in further degradation of water quality. Moreover, mere improvement in management practices is not sufficient to comply with the Nonpoint Source Policy. (<i>Monterey Coastkeeper v. State Water Resources Control Board</i> (2018) 28 Cal.App.5th 342, 369.)</p>	<p>The draft General WDRs require the effectiveness of management practices (MPs) to be evaluated in several different ways, including the following:</p> <ul style="list-style-type: none"> • Visual observation of MP effectiveness by individual members (Section D.2.g); • Surface water monitoring for water quality objective exceedances or trends of degradation (Section E.5.b and MRP, Sections III, VI.A); • Groundwater trend monitoring for water quality objective exceedances or trends of degradation (Section E.5.b and MRP, Sections IV, VI.B); • Surface water and groundwater exceedance reports (Section E.6.a and MRP, Section VI.F); • The identification and training of outliers for nitrogen application (Sections E.5.c.ii, E.7.c); • Additional targeted surface and/or groundwater monitoring required as part of a WQRP if exceedances or trends of degradation are detected (Section E.6.c.v). <p>Implementation of improved management processes comes through the Water Quality Restoration Plan (WQRP) process mandated in Section E.6 of the General WDRs and fully complies with the State Water Board’s Nonpoint Source Policy. The Nonpoint Source Policy allows reliance on management practice implementation to control sources of pollution, but requires a feedback mechanism whereby the implementation requirements are linked to expected</p>

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		<p>water quality outcomes, and the program is adaptively managed to institute improved management practices where additional measures are needed to meet water quality requirements. (See NPS Policy, Key Elements 2 and 4; ESJ Order, p. 31.)</p> <p>The WQRP process in the General WDRs is an adaptive management program that complies with the requirements of the State Water Board's Nonpoint Source Policy. When exceedances of water quality objectives or trends in degradation that threaten beneficial uses are detected as outlined in Section E.6.b, the Coalition Group must submit a WQRP that includes an analysis of the sources of any exceedances/degradation and identifies additional or improved management practices to be implemented by relevant dischargers. The WQRP must include a schedule for implementation of the improved practices and interim annual milestones that demonstrate progress towards completion of the WQRP tasks and compliance with the applicable receiving water limitations. Notably, the WQRP must include a monitoring and reporting plan to provide feedback on WQRP progress and its effectiveness in achieving compliance with the applicable receiving water limitations.</p> <p>The Nonpoint Source Policy explicitly provides that management practice implementation is not a substitute for actual compliance with water quality standards. Notably, the policy recognizes that any activity conducted pursuant to a management practice can be terminated or modified if the conducted activity results in a violation of water quality standards. (NPS Policy, p. 7.) If the improved management practices implemented by dischargers fail to address the water quality</p>

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		<p>exceedance or degradation, or if the relevant dischargers fail to implement the management practices that they have proposed, the Regional Water Board will take “further direct regulation” through the issuance of individual waste discharge requirements (i.e., issuance of a separate permit) or enforcement actions. The provision struck down in <i>Monterey Coastkeeper</i> provided that the dischargers would be deemed in compliance with the receiving water limitations of the permit if they implemented improved management practices in response to monitoring indicating that water quality goals were not being met. In contrast, in the General WDRs, the receiving water limitations are independently enforceable. The Sacramento Superior Court recently rejected an argument that similar provisions in the ESJ Order were not sufficient to meet Key Element 3 of the Nonpoint Source Policy under the <i>Monterey Coastkeeper</i> holding. (ESJ Litigation Order,³ pp. 23-24.)</p>
LCJA-8.4.b	<p>The Water Quality Management Plan (Farm Plan) section (a)(vii) states that “[a] list of agricultural chemicals typically applied to crops at the operation” must be included in submitted Farm Plans. Furthermore, Farm Plan section (e) states that the Colorado River Basin can request less frequent submissions of the Farm Plan to the Coalition group if a “determination is made that the change in frequency is warranted.” It is unclear how this determination would be warranted and Farm Plans are needed to minimize or prevent discharge of waste to waters</p>	<p>Please see response to comment ICFB-4.7. Any decrease in frequency of submission would be guided by the principles outlined in the ESJ Order. The ESJ Order indicates that where the implemented management practices remain fairly stable year to year and there are no water quality problems indicating the need for iterative updating of implemented management practices, annual submissions of the Farm Plan could be more frequent than necessary. (ESJ Order, p. 29.) The ESJ Order states that the life cycle of the management practices being implemented could also help guide the frequency of submissions. (<i>Ibid.</i>) The</p>

³ “ESJ Litigation Order” refers to the October 23, 2020 order by Judge Steven M. Gevercer denying the consolidated Petitions for Writ of Mandate in Sacramento Superior Court, Case Nos. 34-20180-80002851, 34-2018-80002852, 34-2018-80002853. The consolidated petitions each challenge different aspects of the State Water Board’s ESJ Order.

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	<p>of the state. Additionally, a copy of the Farm Plan is only required to be maintained at the Member's farming headquarters or primary place of business, and is only submitted to the Regional Board pursuant to an anonymous identifier.</p>	<p>ESJ Order notes that the regional water boards continue to have discretion as to the form and frequency of submissions concerning management practices. (<i>Ibid.</i>)</p> <p>Further, discretion to decrease the frequency of submission of the Farm Plans is appropriately delegated to the Executive Officer pursuant to Water Code sections 13223 and 13267.</p>
LCJA-8.4.c	<p>The Farm Plan also states in section (g) that "[m]embers shall ensure that all management practices identified in the Farm Plan are properly operated and maintained. Members shall periodically evaluate the effectiveness of the management practices and shall make modifications to the Farm Plan as necessary when visual observation monitoring indicates waste discharges have not been adequately addressed in the Farm Plan." Leaving oversight of Farm Plan implementation to the Coalition and members who are responsible for discharge of waste to our waters is irresponsible and negligent. The Regional Board should take direct responsibility for ensuring that Farm Plans are adequate and implemented.</p>	<p>The Regional Water Board receives the annual Farm Plan and Irrigation and Nitrogen Management Plan (INMP) data provided by the Coalition Group and actively oversees implementation of management practices through the WQRP process when there are reported exceedances of water quality objectives and/or trends of degradation that threaten beneficial uses.</p> <p>The General WDRs rely heavily on the cooperative involvement of third party or coalition groups, particularly given the limited resources of the Regional Water Board and large number of dischargers. Initially, the Regional Water Board relies on the regional knowledge and expertise of the Coalition Group and its members to determine what management practices have the greatest potential for effectiveness. When the chosen management practices are shown to be ineffective, members are required to modify or implement new management practices.</p> <p>The ESJ Order itself states that the State Water Board "continue[s] to support third-party approaches to regulating agricultural discharges, as permitted by the Nonpoint Source Policy." (ESJ Order, p. 20.) Specifically, the ESJ Order notes,</p> <p>From a resource perspective, third parties allow a</p>

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		<p>regional water board to leverage limited regulatory staff by acting as intermediaries between the regional water board staff and the growers, freeing regional water board resources to focus on problem areas or actors. Third parties also may have the expertise to provide technical assistance and training to growers at a scale that cannot be matched by regional water board staff resources, and, in many cases, third parties already have relationships in place with the dischargers.</p> <p>(ESJ Order, p. 20.)</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.4.d	In order to ensure sustainable efforts are being made to address nitrate issues in the Coachella region, we make the following recommendations:	Please see responses to comments LCJA-8.4.d.i through LCJA-8.4.d.vii below.
LCJA-8.4.d.i	<ul style="list-style-type: none"> The Regional Board needs to require the CV Coalition Group to adopt an infrastructure to properly identify ineffective management practices. 	<p>Please see response to comment LCJA-8.4.a concerning monitoring and evaluation of management practices generally.</p> <p>In addition to providing surface water and groundwater monitoring data for nitrogen, the Coalition Group also provides INMP summary data concerning nitrogen applied (A) and removed (R) three different ways: individual field-level AR data by anonymous member ID, individual field-level AR data by anonymous APN ID, and township-level aggregated AR data. The field-level nitrogen AR data will be used to compare the effectiveness of management practices. Ineffective management practices will result in farms that show up as “outliers” when compared to farms that are effectively managing nitrogen.</p> <p>Section E.5.c.ii.2 of the General WDRs requires the</p>

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		<p>Coalition Group to develop an approach to determine which of its members are outliers. The methodology used to determine outliers must be approved by the Regional Water Board's Executive Officer.</p>
LCJA-8.4.d.ii	<ul style="list-style-type: none"> Farm Plans must be available to the public with identification information — nothing in SWRCB Order 2018-003 authorized anonymous submission of Farm Plans. 	<p>This comment mischaracterizes the requirements of the ESJ Order. In fact, Section A.3.c of the ESJ Order actually <i>requires</i> that Farm Plan data be submitted to the Regional Water Board using anonymous identifiers. (ESJ Order, pp. 30-32 [affirming submission of Farm Evaluation data to the Third Party, but requiring that “individual data records also be submitted to the [regional water board] associated with unique anonymous Member identifiers” and giving direction to the Third Party to “permanently associate each Member with a unique, anonymous identifier”].)</p> <p>Please note that the General WDRs use the terms “Farm Plan” and “Coalition Group (or CIVIL Coalition)” to mean the same thing as the terms “Farm Evaluation” and “Third Party” respectively in the ESJ Order.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.4.d.iii	<ul style="list-style-type: none"> All Farm Plans should include a list of agricultural chemicals that are actively being applied to agricultural activities in order to have the most accurate information on water quality. 	<p>The General WDRs already require that Dischargers prepare a Farm Plan indicating what agricultural chemicals they expect to use during the subsequent reporting period. Please see Section D.2.c.vii (now D.2.c.viii) of the draft General WDRs, which requires members to use a Farm Plan template that includes, “A list of agricultural chemicals typically applied to crops at the operation, including but not limited to, fertilizers and organic amendments, pesticides, and fumigants.” Which chemicals dischargers actually use are included in the INMP summary report, which is submitted for the previous year.</p>

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		No changes are proposed in response to this comment.
LCJA-8.4.d.iv	<ul style="list-style-type: none"> Farm Plans must state whether there are on-farm drinking water well(s) present so that the Regional Board can evaluate compliance with notice and testing requirements. 	<p>A new Section D.2.c.iv, stating “The number of drinking water supply wells associated with each enrolled APN;” has been added to the Farm Plan template requirements so that the number of drinking water supply wells associated with each enrolled APN will be reported in the Farm Plan.</p> <p>The eNOI, which is required to complete coverage under the General WDRs, also requires members to disclose the presence of all wells, and whether or not they are used for drinking water, located on their enrolled irrigated lands.</p>
LCJA-8.4.d.v	<ul style="list-style-type: none"> Frequency of Farm Plans should not be changed without public approval and thorough analysis showing water quality remediation and/or reduction in discharge of waste. 	Please see response to comment LCJA-8.4.b.
LCJA-8.4.d.vi	<ul style="list-style-type: none"> The Regional Board must retain copies of all submitted Farm Plans and make them available to the public both online and as a paper copy. All plans should also be translated to languages accessible to the population of the Coachella Valley area. 	Please see response to comment LCJA-8.4.d.ii. Actual copies of the Farm Plan for individual dischargers are retained by the Coalition Group, and this methodology was endorsed by the State Water Board in the ESJ Order. (See ESJ Order, pp. 30-32.) The Coalition Group submits data from the Farm Plan to the Regional Water Board in a table with anonymized grower IDs. That data is public and available through Public Records Act requests. Unfortunately, resources to translate monitoring data are not available at this time.
LCJA-8.4.d.vii	<ul style="list-style-type: none"> The Regional Board must put in place a mechanism for ensuring proper implementation of Farm Plans. 	Please see responses to comments LCJA-8.4.a and LCJA-8.4.d.i.
LCJA-8.5	We appreciate the requirement for on-farm	The General WDRs require that a Groundwater

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	<p>drinking water well testing, and that results must be uploaded to Geotracker.</p> <p>However, while this is a good first step, all wells on the Member's property should be testing drinking water. Groundwater as a source of drinking water is a common use in the Coachella Valley area, especially for Polancos and Mobile Home Parks.⁵ Drinking water is the highest beneficial use of water and as such, should be protected.⁶ Additionally, the On-Farm Drinking Water Well Testing section (b) states that upon detection of an MCL exceedance for nitrates, the coalition Member must notice the Colorado River Basin and users of the well in a "timely fashion."</p>	<p>Monitoring Program be implemented by the Coalition Group in Section E.5.b. Representative monitoring is required to help determine current water quality conditions of groundwater relevant to irrigated agriculture and develop long-term groundwater quality information that can be used to evaluate the regional effects of Irrigated Agricultural Lands practices.</p> <p>Field-level monitoring of every groundwater well located on Irrigated Agricultural Lands is neither required by the General WDRs nor by the ESJ Order. The ESJ Order requires that on-farm drinking water supply wells be sampled for nitrates. (ESJ Order, pp. 59-62.) Otherwise, representative groundwater trend monitoring is required to evaluate potential impacts from discharges from Irrigated Agricultural Lands. (ESJ Order, p. 64.)</p>
LCJA-8.5.a	<p>Further, from our read of the General WDRs, there is no reporting requirement in the Farm Plan or otherwise related to the presence of on-farm drinking water wells. Without a requirement for dischargers to report the presence and number of on-farm drinking water wells, the Regional Board will not be able to determine whether dischargers have complied with the requirement to test on-farm drinking water wells and notify users of the wells of exceedances.</p>	<p>Please see response to comment LCJA-8.4.d.iv.</p>
LCJA-8.5.b	<p>We also note that the timeline for on-farm drinking water testing is unnecessarily long. There is no reason that dischargers cannot complete well testing in 2021. The Regional Board should not allow this unjustified delay in testing.</p>	<p>Please see response to comment CVILC-2.3.c. The Regional Water Board believes the deadline in the General WDRs and MRP Section IV.B for drinking water well testing is reasonable. Dischargers need time to first complete their enrollment in the General WDRs and to be educated on new requirements in the General WDRs. Additionally, the Regional Water Board is sensitive to the logistical challenges posed by the</p>

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		<p>COVID-19 emergency.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.5.c	<p>Finally, in Resolution 2018-002, on review of the precedential East San Joaquin Order, the State Water Resources Control Board stated an expectation that “that the Central Valley Water Board will, where appropriate, act promptly to require the Member to provide users with safe drinking water for consumption.” (p. 60.) The same expectation applies here, and the Regional Board should require dischargers to provide safe drinking water where on-farm domestic well testing reveals an exceedance of drinking water standards for nitrate or other constituents related to agriculture.</p>	<p>Comment noted.</p>
LCJA-8.5.d	<p>In order to protect drinking water, we make the following recommendations:</p>	<p>Please see responses to comments LCJA-8.5.d.i through LCJA-8.5.d.vi below.</p>
LCJA-8.5.d.i	<ul style="list-style-type: none"> • All on-farm wells should be monitored annually for nitrate exceedances, other agricultural constituents (e.g., 1,2,3 TCP), and common drinking water contaminants in the region (e.g., arsenic). 	<p>The ESJ Order makes precedential requirements to sample on-farm drinking water supply wells for nitrogen. (ESJ Order, p.62.) The Regional Water Board declines at this time to go beyond the requirements of the ESJ Order. Please note, however, that nothing precludes dischargers from electing to conduct additional sampling for drinking water wells. Additionally, statutes and regulations under the purview of the State Water Board’s Division of Drinking Water may also require that certain drinking water supply wells be tested.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.5.d.ii	<ul style="list-style-type: none"> • The Regional Board and users of drinking water wells must be notified as soon as 	<p>Specific deadlines are identified in Section IV.B.4 of the MRP and are the same as those approved by the ESJ Order.</p>

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	possible when an MCL violation occurs, with specific deadlines.	
LCJA-8.5.d.iii	<ul style="list-style-type: none"> Dischargers must report the presence and number of on-farm drinking water wells to the Regional Board (e.g., in the Farm Plans) so that the Regional board can determine whether growers have complied with the on-farm drinking water well testing and notification requirements. 	Please see response to comment LCJA-8.4.d.iv.
LCJA-8.5.d.iv	<ul style="list-style-type: none"> The first round of on-farm drinking water well testing must be completed by September 1, 2021. 	Please see response to comment LCJA-8.5.b.
LCJA-8.5.d.v	<ul style="list-style-type: none"> The General WDRs must be amended to require dischargers to provide an adequate supply of safe water to farmworkers and tenants reliant upon an on-farm drinking water well that exceeds drinking water standards for nitrate or other agricultural constituents. 	<p>Any enforcement orders or agreements to provide replacement drinking water will be addressed separately outside the General WDRs on a case-by-case basis.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.5.d.vi	<ul style="list-style-type: none"> The Regional Board must require dischargers to establish a testing program for off-farm domestic wells that appear based on available data to be at risk of exceeding a drinking water standard for nitrate or other agricultural constituents. 	<p>The Regional Water Board declines at this time to go beyond the requirements in the ESJ Order, which only requires on-farm drinking water supply well testing. (See ESJ Order, pp. 59-62.) Additionally, the General WDRs only regulate enrolled parcels of Irrigated Agricultural Lands, not offsite drinking water wells. The State Water Board's Division of Drinking Water is better situated to establish a program for offsite drinking water well testing and already has requirements in place for wells that supply water to a sufficiently large number of people.</p>

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LCJA-8.6	<p>Coalition Members are only being required to participate in a Coalition Group outreach and education event once annually. Additionally, Coalition members are the ones who provide confirmation of their attendance at a Coalition Group outreach and education event. Only requiring attendance at one educational event and allowing for the member to provide confirmation of attendance does not show commitment to informing farmers of important developments in water quality protection and management practices.</p> <p>To ensure commitment to Education and Outreach we make the following recommendations:</p> <ul style="list-style-type: none"> • The Regional Board should require attendance at multiple events annually • Regional Board staff need to actively assess attendance at education and outreach events. 	<p>Members are required to submit proof of attendance at educational events to the Coalition Group, and the Coalition Group also must keep track of attendance at its events. (General WDRs, Sections D.4.b and E.7.a.)</p> <p>Section E.7.b of the General WDRs provides detailed requirements concerning educational events hosted by the Coalition Group, including that outreach events and materials must include information on nitrogen application practices and the potential impact of nitrates on groundwater and provide members with information on water quality management practices that will address water quality problems and minimize the discharge of wastes from Irrigated Agricultural Lands. The meeting materials must be provided in multiple languages as appropriate, and copies must be provided to the Regional Water Board along with a summary of the event.</p> <p>The ESJ Order only requires annual participation in outreach events, noting that regional water boards have discretion over the precise form and frequency of required outreach events. (ESJ Order, pp. 27-28.) At this time, the Regional Water Board is starting with a minimum requirement for attendance at one annual event, but this may be adjusted in the future as the irrigated lands program in the region matures.</p> <p>No changes are proposed in response to this comment.</p>
LCJA-8.7	<p>We recognize that the requirement to report nitrogen loading data to the Coalition, and summaries to the Regional Board by anonymous identifier are based on the requirements of SWRCB Order 2018-003. (See pp. 31-32.) However, nothing in that Order restricts the ability of the Regional Board to require additional</p>	<p>Comment noted. The Regional Water Board declines to go beyond the requirements of the ESJ Order at this time, but requirements may be adjusted in the future as the irrigated lands program in the region matures.</p>

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	reporting and monitoring. We ask that the Regional Board take steps to proactively and meaningfully develop data regarding nitrogen loading and groundwater quality.	
LCJA-8.7.a	It is imperative that the public has access to water quality data that impacts their uses of water. Having such an anonymized process impedes access to data that should be made public. We note that the Nonpoint Source Policy requires that the “public” be able to evaluate the effectiveness of efforts to protect groundwater quality from nonpoint source discharges. As drafted, the General WDRs do not allow the public sufficient information regarding nitrogen loading and groundwater quality. This is especially true given the lack of available groundwater quality data compared to the Central Valley and Central Coast Regions, as well as the decision not to require development of Township-Level nitrogen loading targets. (See <i>supra</i> .)	<p>The Regional Water Board is following precedential direction from the State Water Board in requiring the use of anonymous identifiers. The Regional Water Board understands that this issue has been raised in litigation with the State Water Board over the ESJ Order and believes that forum is more appropriate to resolve this issue. In that litigation, the Sacramento Superior Court recently held that the framework of anonymous reporting set out in the ESJ Order does not violate Nonpoint Source Policy Key Element 4’s requirement that a nonpoint source implementation program include sufficient feedback mechanisms to allow the public to determine whether the program is achieving its stated purpose. (ESJ Litigation Order, pp. 15-16).</p> <p>Please also see response to comment LCJA-8.8 below.</p>
LCJA-8.7.b	We also note that, while we support reporting of nitrogen applied and removed data and the requirement to develop a groundwater quality trend monitoring program, the timelines for implementing these monitoring and reporting programs are unnecessarily and unjustifiably long. There is no justification for waiting a year for submission of a groundwater quality trend monitoring plan, until 2024 for reporting of nitrogen applied and removed data, or for waiting until 2025 for the Coalition to publish coefficients for converting crop yield to nitrogen removed values.	Please see response to comments CVILC-2.2, CVILC-2.2.a through CVILC-2.2.c, and CVILC 2.3.c. The Regional Water Board believes that it has struck the right balance between requiring timely compliance with precedential and new requirements and allowing CVILC and its members sufficient time to implement those requirements. Many aspects of the General WDRs are entirely new to the region’s irrigated lands program and will require significantly increased resources from CVILC and its members to implement. Additionally, the Regional Water Board is sensitive to the logistical challenges posed by the COVID-19 emergency.

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LCJA-8.7.c	To ensure adequate monitoring and reporting of data relevant to nitrogen loading and nitrate discharges, we recommend the following:	Please see responses to comments LCJA-8.7.c.i and LCJA-8.7.c.iii below.
LCJA-8.7.c.i	<ul style="list-style-type: none"> Nitrogen loading data must be submitted directly to the Regional Board in a format that allows the Board and the public to evaluate when and where excessive loading is occurring, and compare the loading data to available groundwater quality data developed as part of the on-farm domestic well testing and groundwater quality trend monitoring programs. 	Please see responses to comments LCJA-8.4.d.ii, LCJA-8.4.d.vi, and LCJA-8.5.
LCJA-8.7.c.ii	<ul style="list-style-type: none"> The timelines for implementation of the reporting and monitoring requirements must be shortened to the extent practicable to eliminate unnecessary and unjustified delays. At a minimum, there must be a requirement to implement both groundwater quality trend monitoring and nitrogen loading reporting by 2022. 	Please see response to comment LCJA-8.7.b.
LCJA-8.7.c.iii	<ul style="list-style-type: none"> All monitoring and reporting submitted to the Regional Board must be made available to the public in a format that is easily accessible and that is translated into all relevant languages spoken by potentially impacted residents of the Coachella Valley. 	Please see response to comment LCJA-8.4.d.vi.
LCJA-8.8	Compliance Program Reporting Section (c)(iii) states that, based on currently-available groundwater data, the Regional Board will not require the development of township-level targets for nitrogen loading at this time.	The Regional Water Board does not have sufficient data and information at this time to indicate “high priority areas” where irrigated agriculture may be causing or contributing to exceedances of water quality objectives and/or trends of degradation that may threaten

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	<p>The decision not to require development of township-level groundwater protection targets conflicts with precedential portions of SWRCB Order 2018-003, which states that “[e]ven if the programs do not require GQMPs, all of the regional water boards shall apply this methodology or a similar methodology, designed to determine targets for nitrogen loading within high priority townships or other geographic areas, for the remaining irrigated lands regulatory programs in the state. High priority areas are those areas where the Executive Officer determines that irrigated agriculture may be causing or contributing to exceedances of water quality objectives or a trend of degradation of groundwater that may threaten applicable basin plan beneficial uses.” (Order 2018-003, pp. 66-67.)</p> <p>The Regional Board’s apparent determination that agriculture is not causing or contributing to exceedance of water quality objectives or a trend of degradation that may threaten beneficial uses is based on one study by the USGS from 2007. That study, in addition to being outdated, appears to have evaluated very few wells. Eleven test results are summarized in the Tentative Order and General WDRs. (See p. A-6 - A-7.) This one old study is insufficient to rule out that agriculture “may” be contributing to exceedances of water quality objectives. This is especially true given that one of the eleven test results from the 2007 study showed an exceedance of the water quality objective for nitrate, and a second showed an elevated level of 7.12 mg/L.</p>	<p>applicable basin plan beneficial uses. (Please see response to comment LCJA-8.2.a and the added paragraph to Section II.B of Attachment A – Information Sheet concerning the need for further groundwater data.)</p> <p>However, the Regional Water Board recognizes that, as more data becomes available through monitoring and reporting under the General WDRs, the Regional Water Board may find that certain townships or geographic areas meet the criteria for development of groundwater protection targets, values, and formulas. Such monitoring and reporting includes submission of township-level INMP summary report data, drinking water well monitoring, and groundwater trend monitoring.</p> <p>In response to this comment, the Regional Water Board will revise the provisions in the Section E.5.iii of the General WDRs concerning township-level nitrogen targets, including by adding a provision directing the Executive Officer to evaluate new data to determine if any areas qualify as “high priority areas” for development of groundwater protection formulas, values, and targets.</p> <p>Section E.5.iii.1 will be revised to better explain the rationale for not requiring township-level nitrogen targets at this time, as follows:</p> <p>“The Colorado River Basin Water Board will not be requiring the development of township-level targets for nitrogen loading at this time, because the Colorado River Basin Water Board does not have sufficient data</p>

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	<p>Lack of data should not mean inaction on behalf of the Regional Board. Rather, the Regional Board should act proactively to update and refine its understanding of groundwater quality in the Coachella Valley, and act to prevent the widespread nitrate contamination seen in the Central Valley and Central Coast Regions.</p> <p>To help ensure protection of groundwater quality and better understand the impact of nitrogen loading and nitrate discharges, we make the following recommendations:</p> <ul style="list-style-type: none"> • The Colorado River Basin must require that the Coalition promptly develop Township-Level Groundwater Protection Formula(s), Value(s) and Target(s). 	<p>and information at this time to indicate ‘high priority areas’ where irrigated agriculture may be causing or contributing to exceedances of water quality objectives and/or trends of degradation that may threaten applicable Basin Plan beneficial uses.”</p> <p>Section E.5.iii.2 will be revised to indicate that new data will inform the Executive Officer’s assessment of groundwater, as follows:</p> <p>“As more data becomes available through monitoring and reporting under these General WDRs, the Colorado River Basin Water Board’s Executive Officer may later identify ‘high priority areas’ where discharges from Irrigated Agricultural Lands may be causing or contributing to exceedances of water quality objectives, or a trend of degradation of groundwater that may threaten applicable basin plan beneficial uses.”</p> <p>A new Section E.5.iii.3 will be added as follows:</p> <p>“The Executive Officer shall evaluate new data by December 31, 2025 to determine if any geographic areas qualify as ‘high priority areas’ for the development of groundwater protection formulas, values, and targets. The Executive Officer shall require development of township-level nitrogen targets for any identified ‘high priority areas.’ The methodology for determining the targets shall be subject to public review and comment.”</p>
LCJA-8.9	<p>We support the inclusion of the Water Quality Restoration Plan Provisions in the General WDRs. We further appreciate the recognition that a Water Quality Restoration Plan is potentially warranted either if there is an exceedance, or a</p>	<p>The Regional Water Board agrees that the language at issue should be mandatory rather than permissive.</p> <p>The first sentence of Section E.6.b will be revised to read, “The Colorado River Basin Water Board <u>shall</u> require Coalition Groups to prepare a Water Quality</p>

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	<p>trend of degradation that threatens a beneficial use. However, the current language is permissive rather than mandatory: “The Colorado River Basin Water Board may require Coalition Groups to prepare a Water Quality Restoration Plan (WQRP)...” (General WDRs, p. 31.)</p> <p>The Regional Board must require a Water Quality Restoration Plan if there is a water quality exceedance or a trend of degradation of water quality is identified that threatens a beneficial use. Threats to water quality do not just affect residents of the Coachella Valley reliant on groundwater for drinking water, and the Regional Board is required to protect water quality for all beneficial users. Additionally, as the Salton Sea is within the Coalitions’ region, coalition members must work towards ensuring nitrate related activities do not have negative impacts on its already degraded water quality.</p> <p>To ensure that degraded water is restored in a timely fashion, the General WDRs should be revised as follows:</p> <p>b. The Colorado River Basin Water Board may <u>shall</u> require Coalition Groups to prepare a Water Quality Restoration Plan (WQRP) if (a) there is a water quality exceedance or (b) a trend of degradation of water quality is identified that threatens a beneficial use in receiving waters affected by its Members’ activities on Irrigated Agricultural Lands. For purposes of this Order, an “exceedance” occurs when (a) a sampling result for a constituent at a single surface water monitoring location exceeds a water quality</p>	<p>Restoration Plan (WQRP) if (a) there is a water quality exceedance or (b) a trend of degradation of water quality is identified that threatens a beneficial use in receiving waters affected by its Members’ activities on Irrigated Agricultural Lands.”</p>

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	objective or benchmark limit specified in the MRP, Attachment B more than three out of four times for the same constituent, or (b) a single groundwater sampling result exceeds a water quality objective.	
LCJA-8.9a	Additionally, it is not sufficient that the Water Quality Restoration Plan include steps to “prevent or minimize” degradation. The Porter-Cologne Water Quality Control Act, Nonpoint Source Policy and Antidegradation Policy require compliance with water quality objectives, not mere minimization of degradation.	The WQRP process does not merely require steps be taken to “prevent or minimize degradation”; rather, Section E.6.c.vi of the General WDRs states that the WQRP must include a time schedule that “may not be longer than that which is reasonably necessary to achieve the receiving water limitations in Section C of these General WDRs.” Compliance with receiving water limitations is required in this section and in Section C of the General WDRs.
LCJA-8.9b	Finally, the requirement for interim milestones in Section 6.c.iv. must be revised to conform with the Nonpoint Source Policy, which requires “quantifiable milestones designed to measure progress toward reaching the specified requirements,” including compliance with water quality objectives.	<p>This requirement is already in the draft General WDRs. Section E.6.c.vi states, “If the schedule exceeds one year, the schedule must include interim annual milestones that demonstrate progress towards completion of the WQRP tasks and compliance with the applicable receiving water limitations of these General WDRs.” The Sacramento Superior Court recently upheld a similar provision in the ESJ Order as consistent with the Nonpoint Source Policy’s requirement to establish quantifiable milestones. (ESJ Litigation Order, pp. 23-24.)</p> <p>For clarity, the Regional Water Board will add the word “quantifiable” to the last sentence in Section E.6.c.iv as follows:</p> <p>“If the schedule exceeds one year, the schedule must include <u>quantifiable</u>, interim milestones that demonstrate progress towards completion of the WQRP tasks and compliance with the applicable receiving water limitations of these General WDRs.”</p>

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LCJA-8.10	<p>Water Code § 13263(a) requires that the regional board prescribe waste discharge requirements, which “shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” The requirements “may contain a time schedule, subject to revision in the discretion of the board.” (Water Code § 13263(c).)</p> <p>The water quality control plan relevant here is the Water Quality Control Plan for the Colorado River Basin Region (the “Water Quality Control Plan”). The Water Quality Control Plan states that “Ground waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Table 64431-A of section 64431 (Inorganic Chemicals)...” (p. 3-10.) Table 64431-A sets the MCL for nitrate at 10 mg/L (measured as N). The Water Quality Control Plan states that the Regional Board can “apply limits more stringent than MCLs” to protect beneficial uses, but it does not permit the Regional Board to set less stringent limits. (p. 3-10.)</p> <p>Additionally, the Water Quality Control Plan incorporates the Nonpoint Source policy, which states under Key Element 4 that “[a]n NPS control implementation program shall include sufficient</p>	<p>Please see responses to comments LCJA-8.3 and LCJA-8.4.a.</p> <p>The General WDRs fully comply with the requirements of the Porter Cologne Water Quality Control Act and the Nonpoint Source Policy. The Nonpoint Source Policy allows reliance on management practice implementation to control sources of pollution, as long as there are sufficient feedback mechanisms whereby the implementation requirements are linked to expected water quality outcomes, and then adaptive management to institute improved management practices where additional measures are needed to meet water quality requirements. (ESJ Order, p. 31.)</p> <p>As explained in response to comment LCJA-8.4.a, the General WDRs incorporate appropriate quantifiable metrics and reporting requirements that provide sufficient feedback mechanisms, nearly identical to those approved by the State Water Board in the ESJ Order. The Water Code and the Nonpoint Source Policy do not dictate that quantifiable milestones be nitrogen loading limits nor do they require that the feedback mechanism include monitoring at individual sites. The Regional Water Board understands that similar arguments have been raised in litigation with the State Water Board over the ESJ Order and believes that forum is more appropriate to resolve challenges to the framework and precedent approved by the State Water Board in the ESJ Order.</p> <p>The Sacramento Superior Court recently rejected similar arguments that unless the public and the Regional Water Board know individual data points where nitrogen is discharged and impose limits on those discharges, they cannot adequately determine if</p>

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	<p>feedback mechanisms so that the [Regional Boards], dischargers, and the public can determine whether the program is achieving its stated purpose(s)."</p> <p>As acknowledged in the General WDRs, the Water Quality Control Plan designates the relevant portion of the Whitewater Hydrologic Unit as supporting the MUN beneficial use. (General WDRs, p. 12.) As such, nitrate concentrations in the Coachella Valley cannot exceed 10 mg/L.</p> <p>The General WDRs do not require, in any real sense, either immediate compliance with the numeric water quality objective for nitrate in groundwater, or compliance under a time schedule in the "shortest practicable period of time. As eloquently noted in <i>Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.</i> (2012) 210 Cal.App.4th 1255 (hereinafter "AGUA"), the "wish is not father to the action." This is to say that a stated prohibition is insufficient without provisions to require compliance with the prohibition.</p> <p>The General WDRs state that "[w]astes discharged from Irrigated Agricultural Lands in the Coachella Valley shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance." (p. 20.) However, nothing in the General WDRs actually prevents the exceedance of the water quality objective for nitrate in groundwater, or provides the "feedback</p>	<p>the water quality control program is working. (ESJ Litigation Order, pp. 16-18, 24-26.) The court found that the Nonpoint Source Policy and the Water Code both allow for aggregated or watershed monitoring and granted deference to the State Water Board's findings on monitoring given the extent to which the State Water Board considered this issue and relied on the findings and recommendations of the Agricultural Expert Panel. (ESJ Litigation Order, pp. 25-26.)</p>

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	<p>mechanisms” required by the Nonpoint Source policy. Specifically, as discussed above, the General WDRs do not require a combination of monitoring and reporting necessary to detect exceedances when and where they occur, and do not impose enforceable limits (or even unenforceable targets) for nitrogen loading or nitrate discharges.</p> <p>Because the General WDRs do not require compliance with the nitrate water quality objective through adequate monitoring, reporting and loading and/or discharge limits, they do not comply with Porter-Cologne.”</p>	
LCJA-8.11	<p>The State Antidegradation Policy is set forth in Resolution 68-16, which states in part that high quality waters shall “be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.”</p> <p>Resolution 68-16 further states that “[a]ny activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with the maximum benefit to the people of the State will be</p>	<p>The General WDRs fully comply with the Antidegradation Policy. Please see responses to comments LCJA-8.11a and LCJA-8.11b below.</p>

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	<p>maintained.”</p> <p>In <i>AGUA</i>, 210 Cal.App.4th at 1258-59, the court held that a general waste discharge order issued by the Central Valley Regional Water Control Board in 2007, which purported to prohibit further degradation of groundwater from existing dairy farms, was inconsistent with the antidegradation policy. The court noted that a conclusory prohibition on further degradation was not sufficient to comply with the antidegradation policy. (<i>Id.</i> at 1259.) Instead, the <i>AGUA</i> court held that the Regional Board, in order to comply with the Antidegradation Policy, must affirmatively “demonstrate” compliance with the Policy. (<i>Id.</i> at 1278.)</p> <p>This affirmative requirement is accomplished through a “two-step process” for “determining whether a discharge into high quality waters is permitted.” (<i>Id.</i> at 1278, 1282.) The first step of the process is for the Regional Water Board to make three (3) “specified findings,” that the “change in water quality (1) will be consistent with maximum benefit to the people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in state policies...” (<i>Id.</i> at 1278.)</p> <p>The second step of the <i>AGUA</i> process is a finding “that any activities that result in discharges to such high quality waters are required to use the best practicable treatment or control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality</p>	

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	<p>consistent with the maximum benefit to the people of the State.” (<i>Id.</i>)</p> <p>The General WDRs do not comply with these requirements.</p>	
LCJA-8.11.a	<p><i>The Antidegradation Analysis Does Not Make The Proper Baseline Comparison.</i></p> <p>“When undertaking an antidegradation analysis, the Regional Board must compare the baseline water quality (the best quality that has existed since 1968) to the water quality objectives.” (AGUA, 210 Cal.App.4th at 1270.) Then, “[i]f the baseline water quality is equal to or less than the objectives, the objectives set forth the water quality that must be maintained or achieved” and “the antidegradation policy is not triggered.” (<i>Id.</i>) On the other hand, “if the baseline water quality is better than the water quality objectives, the baseline water quality must be maintained in the absence of findings required by the antidegradation policy.” (<i>Id.</i>)</p> <p>The Regional Board has not conducted this baseline analysis, though it acknowledges that “[s]ome limited degradation to high quality waters may occur as a result of discharges from Irrigated Agricultural Lands subject to this permit.” (General WDRs, p. 16.) The mere acknowledgement that some high quality waters may be impacted does not comply with the requirements of the Antidegradation policy as discussed in AGUA. While we acknowledge that reliable data regarding groundwater conditions since 1968 is not always available, the Regional Board is required to analyze available data and make a</p>	<p>The baseline antidegradation analysis in the General WDRs complies with the precedential direction in the ESJ Order. In the ESJ Order’s discussion of the Antidegradation Policy, the State Water Board noted the difficulties of conducting a “traditional” antidegradation analysis in the context of nonpoint source discharges. The ESJ Order observed that it was “practically impossible” to establish a numeric baseline for hundreds of water bodies and waste constituents in the region. (ESJ Order, p. 78.) However, the State Water Board found appropriate a “general antidegradation analysis” that assumed that at least some portion of regional groundwater was “high quality waters.” (<i>Ibid.</i>)</p> <p>Following the precedential direction of the ESJ Order, the Regional Water Board made a similar “non-traditional” analysis that contains a general assessment of baseline water quality. To clarify the scope of that analysis and the data upon which the Regional Water Board relied, the antidegradation analysis in the draft General WDRs has been amended to reference the studies and data considered.</p> <p>The Regional Water Board understands that similar arguments have been raised by the commenter in litigation with the State Water Board over the ESJ Order and believes that forum is more appropriate to resolve challenges to the framework and precedent approved by the State Water Board in the ESJ Order.</p>

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	<p>reasonable effort to analyze water quality since 1968. Without understanding the extent to which high quality waters are present in the Coachella Valley, it is impossible to adequately evaluate maximum benefit.</p>	<p>The Sacramento Superior Court recently found that the State Water Board did not abuse its discretion by conducting a "non-traditional" analysis that differs from the approach set forth in <i>AGUA</i>. (ESJ Litigation Order, pp. 30-34.) Even though the State Water Board did not follow a waterbody by waterbody and pollutant by pollutant analysis, which has limited value when considering antidegradation in the context of nonpoint source discharges, the court held that the ESJ Order did make the findings required by the Antidegradation Policy. (ESJ Litigation Order, pp. 32-33.) Further, the court found that the State Water Board's interpretation of the Antidegradation Policy is entitled to deference. (ESJ Litigation Order, pp. 33-34.)</p>
LCJA-8.11.b	<p><i>The "Maximum Benefit" Finding Is Not Supported.</i></p> <p>The finding that a change in water quality will be "consistent with the maximum benefit to the people of the State" must be made on a "case-by-case basis...based on considerations of reasonableness under the circumstances at the site." (<i>Id.</i> at 1279.) In making this "case-by-case" finding, the Board must consider the following factors "(1) past, present, and probable beneficial uses of the water (specified in Water Quality Control Plans); (2) economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, (3) environmental aspects of the proposed discharge; and (4) the implementation of feasible alternative treatment or control methods." (<i>Id.</i>)</p> <p>In support of its maximum benefit finding the General WDRs state only the following:</p>	<p>The findings regarding "maximum benefit" have been revised to clarify the information and data considered by the Regional Water Board in making that finding. Additionally, further detail has been added to Section III of Attachment A – Information Sheet concerning the economic benefits of agriculture in Coachella Valley.</p> <p>The Sacramento Superior Court recently rejected the argument that the Antidegradation Policy requires a site-specific analysis, e.g., that the ESJ Order ought to have balanced the benefits and costs against particular communities within the Eastern San Joaquin Region. The court rejected the argument that the Antidegradation Policy requires this level of granularity and approved the more generalized findings of the State Water Board. (ESJ Litigation Order, pp. 34-35.) The level of analysis conducted by the Regional Water Board for the draft General WDRs is consistent with the generalized analysis contemplated in the ESJ Order.</p>

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	<p>Agriculture is a significant generator of economic activity and employment in the area and provides food for the region and beyond. These General WDRs address the health, environmental, and social costs associated with agricultural discharges by prohibiting discharges that will cause or contribute to exceedances of water quality objectives, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance. The General WDRs also require sampling of on-farm drinking water wells to ensure that users of the wells are not drinking water exceeding nitrate contamination health levels.</p> <p>(General WDRs, pp. 16-17.)</p> <p>This is wholly inadequate, and makes mistakes similar to those made by the Central Valley Regional Board in the Antidegradation analysis in support of the Dairy General Order. Namely, a generalized finding that agriculture is important for economic activity, employment and food production is not sufficient to support a maximum benefit finding. Rather, in considering “economic” costs, the Regional Board must consider “both costs to the discharger and the affected public,” and in doing so, “[c]ost savings to the discharger, standing alone, absent a demonstration of how these savings are necessary to accommodate ‘important social and economic development’ are not adequate justification” for permitting degradation. (AGUA, 210 Cal.App.4th at 1279.) In considering “social” costs, consideration must be given to whether a lower water quality can be abated through reasonable means. In other</p>	<p>Further, the Antidegradation Policy does not define “maximum benefit to the people of the state” and does not require a specific set of considerations. The AGUA decision references a 1995 State Water Board guidance memorandum that lays out a non-exclusive list of factors that the Regional Water Board may consider in determining whether degradation of water quality is consistent with maximum benefit to people of the state, which commenters reiterate here. The AGUA decision did not state that the factors are mandatory nor did it rely on any of the factors in concluding that the maximum benefit findings supporting the dairy order were inadequate. (AGUA, 210 Cal.App.4th at p. 1279.) Regardless, factors 1 and 4 are already considered in making the findings regarding whether the Regional Water Board’s action will unreasonably impact beneficial uses and whether the discharge is controlled by the best practicable treatment or control, respectively. Further, the Regional Water Board considered economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, in its maximum benefit finding. The Regional Water Board similarly considered environmental factors throughout the order, including when it considered impairments in the region and when it made CEQA findings, and specified the requirements constituting BPTC based on those environmental factors.</p>

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	<p>words, the lower water quality should not result from inappropriate treatment facilities or less-than-optimal operation of treatment facilities.” (<i>Id.</i>)</p> <p>As a result, the Regional Board must assess based on available data the extent to which Coachella Valley Agriculture generates economic activity, employment and food production. It must then compare these benefits to the costs of permitting degradation of high quality waters, including treatment costs, costs of consolidation or extension of public water service, remediation, health impacts, and costs of replacement water. The Regional Board cannot merely rely upon a stated generalized prohibition of exceedances in finding that there are no costs related to the degradation without requiring the means to detect exceedances when and where they occur through a combination of monitoring and reporting, and adopting regulation to prevent exceedances through groundwater quality protection targets, nitrogen loading limits, and discharge limits. Given that the General WDRs do not contain the requirements that would allow the Regional Board to detect and timely prevent exceedances, the Regional Board must analyze impacts on drinking water beneficial users and balance those costs against benefits to the dischargers.</p> <p>In short, the General WDRs contains no analysis of the economic costs or social costs to the public or environmental aspects of the proposed “limited degradation” of existing high quality waters, and thus does not contain an adequate “maximum benefit” finding. The General WDRs do not reflect comprehensive steps towards preventing further</p>	

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	<p>degradation of water quality, which includes choosing not to make a Water Quality Restoration Plan mandatory upon exceedances or degradation, having inadequate protocols for monitoring and reporting of nitrate exceedances, and lack of oversight for Farm Plan reporting and implementation, among other issues.</p> <p>Because the General WDRs do not comply with the Antidegradation Policy, the Regional Board cannot approve them.</p>	
LCJA-8.12	<p>As noted above, waste discharge requirements must implement water quality control plans and must be consistent with state water policies. (Wat. Code §§ 13146, 13240, 13263; <i>Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.</i> (2012) 210 Cal.App.4th 1255, 1263.) One such policy is the Policy for Implementation and Enforcement of the Nonpoint Source Control Program (“Nonpoint Source Policy” or “NPS Policy”), adopted by the SWRCB in 2004. The Nonpoint Source Policy contains five mandatory Key Elements that all nonpoint source pollution control implementation programs must comply with. (NPS Policy at 11.)</p> <p>Key Element 1 states in part that “[a]n NPS control program must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.” (Nonpoint Source Policy at 12.) Key Element 3 recognizes that compliance with ambient groundwater quality objectives is not always immediately possible, but requires that</p>	<p>The draft General WDRs fully comply with the Nonpoint Source Policy as follows:</p> <p>Key Element 1: The draft General WDRs clearly state that “The purpose of these General WDRs is to minimize or eliminate waste discharges from Irrigated Agricultural Lands to waters of the state that may be causing or contributing to exceedances of applicable federal or state water quality objectives.” (Finding 68 [formerly 67].) The General WDRs prohibit discharges that cause or contribute to exceedances of water quality objectives, except where the dischargers are implementing a Water Quality Restoration Plan with a time schedule and milestones designed to bring the dischargers into compliance with the receiving water limitations. (General WDRs, Section C.) The General WDRs further make the appropriate findings as required by the Antidegradation Policy.</p> <p>Key Element 2: The General WDRs require dischargers to implement management practices that prevent or control discharges of waste that are causing or contributing to exceedances of water quality objectives. Dischargers select management practices through the preparation of Water Quality Management</p>

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	<p>any time schedule to achieve WQOs contain “quantifiable milestones designed to measure progress toward reaching the specified requirements.” (NPS Policy at 13.) Key Element 4 states that “[a]n NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required.” (<i>Id.</i>) Additionally, Key Element 5 states that every Regional Board “shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program’s stated purposes.” (<i>Id.</i>)</p> <p>As more fully discussed above, the General WDRs do not comply with the Nonpoint Source Policy because they do not assure compliance with water quality objectives, do not comply with the Antidegradation Policy, do not require quantifiable milestones designed to measure progress toward achieving compliance with water quality objectives, do not include feedback mechanisms sufficient for the Regional Board and the public to evaluate the program, and do not make clear the potential consequences for failure to achieve compliance with water quality objectives. Courts have held that merely requiring improved management practices is not sufficient for compliance with the Nonpoint Source Policy, which requires, <i>inter alia</i>, that nonpoint source pollution prevention programs have a “high likelihood” of attaining water quality objectives and</p>	<p>Plans (Farm Plans) and Irrigation and Nutrient Management Plans (INMPs), and through participation in the Water Quality Restoration Plans.</p> <p>Key Element 3: Please see responses to comments LCJA-8.3, and LCJA-8.4.a, LCJA-8.9.a, LCJA-8.9.b, LCJA-8.10.</p> <p>Key Element 4: Please see responses to comments LCJA-8.3, and LCJA-8.4.a, LCJA-8.9.a, LCJA-8.9.b, LCJA-8.10.</p> <p>Key Element 5: The General WDRs state that “If a Discharger fails to address impacts to water quality by taking the actions required by this Order, including evaluating the effectiveness of their management practices and improving as needed, the Discharger may then be subject to progressive enforcement and possible monetary liability.” (Finding 69 [formerly 68].) Further, “failure to implement practices or address the exceedances or degradation in accordance with the schedule proposed in the approved [Water Quality Restoration] plan may result in further direct regulation by the Colorado River Basin Water Board, including, but not limited to, regulating the individual Discharger directly through WDRs for individual discharges or taking other progressive enforcement actions.” (Finding 84 [formerly 81].) Finally, the draft General WDRs state that outliers for multi-year A/R ratios will be required to complete additional training and report on additional or improved management practices on their next INMP summary report.</p> <p>The regulatory framework of the General WDRs follows the precedential pattern set in the ESJ Order. The Sacramento Superior Court recently held that the ESJ</p>

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	<p>that management practice “implementation never may be a substitute for meeting water quality requirements.” (<i>Monterey Coastkeeper v. State Water Resources Control Board</i> (2018) 28 Cal.App.5th 342, 369.)</p> <p>Because the General WDRs do not comply with the Nonpoint Source Policy, the Regional Board cannot adopt them.</p>	<p>Order fully complies with the Nonpoint Source Policy. (ESJ Litigation Order, pp. 23-28.)</p> <p>For clarity, the Regional Water Board adds the following sentence to the end of Finding 69 [formerly 68]:</p> <p>“Consistent with the State NPS Policy, the Colorado River Basin Water Board finds that there is a high likelihood that the General WDRs will attain their ultimate purpose of attaining water quality objectives and protecting beneficial uses.”</p>
LCJA-8.13	<p>The “reasonable and beneficial use” doctrine is codified in the California Constitution, requiring that “the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.” (Cal Const, Art. X § 2; see also <i>United States v. State Water Resources Control Bd.</i> (1986) 182 Cal.App.3d 82, 105 [“...superimposed on those basic principles defining water rights is the overriding constitutional limitation that the water be used as reasonably required for the beneficial use to be served.”].)</p> <p>Along the same lines, the “public trust” doctrine applies to the waters of the State, and states that “the state, as trustee, has a duty to preserve this trust property from harmful diversions by water rights holders” and that thus “no one has a vested right to use water in a manner harmful to the state’s waters.” (<i>United States v. State Water</i></p>	<p>There is no mandatory duty for the Regional Water Board to consider the “reasonable and beneficial use” doctrine in this permitting action. Article X, section 2 of the California Constitution does not impose requirements on a state agency when issuing a water quality permit. The legislative water quality permitting regime does not contemplate that the Regional Water Board will perform a waste and unreasonable use analysis before issuing water quality permits. The Legislature identified the issues the Regional Water Board is to “take into consideration” before issuing WDRs in Water Code section 13263, subdivision (a). They include “the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241 [listing economic considerations and the need for developing housing, among others].” None of those considerations involve whether the quantity of water discharged itself is a waste or unreasonable use of water.</p> <p>The public trust doctrine is similarly inapplicable. Requiring the Regional Water Board to consider the public trust when issuing water quality orders would be an expansion of the doctrine to a brand new area of</p>

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	<p>Resources Control Bd., 182 Cal.App.3d at 106; Nat'l Audubon Soc'y v. Superior Court (1983) 33 Cal.3d 419, 426 ["before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests."].) The "public trust" doctrine has recently been applied to groundwater, at least where there is a hydrogeological connection between the groundwater and a navigable surface water body. (<i>Env'tl. Law Found. v. State Water Res. Control Bd. No. 34-2010-80000583</i> (Cal. Super. Ct July 15, 2014).)</p> <p>The General WDRs does not mention or apply either the "reasonable and beneficial use" or "public trust" doctrines.</p>	<p>law. In California's precedent-setting case regarding the public trust, <i>National Audubon Society v. Superior Court</i> (1983) 33 Cal.3d 419, the duty was set for the planning and allocation of water resources, not to a water quality order. Even if consideration of the public trust is required, the permit does effectively take it into account. It particularly does so through the antidegradation balancing analysis and through protection of public trust resources by protecting the beneficial uses of receiving waters as established in the Basin Plan. Public trust resources were also considered through the programmatic 2014 Negative Declaration that was completed for the irrigated lands program in the region. The Regional Water Board is not obligated to perform a separate supplemental analysis to determine the effect on the public trust doctrine. (See <i>Citizens for East Shore Parks v. State Lands Comm.</i> (2011) 202 Cal. App. 4th 549, 578.)</p> <p>Again, the Regional Water Board understands that similar arguments have been raised by the commenter in litigation with the State Water Board over the ESJ Order and believes that forum is more appropriate to resolve this issue. The Sacramento Superior Court recently held that the ESJ Order did not violate the public trust doctrine. (ESJ Litigation Order, pp. 28-29.)</p>
LCJA-8.14	<p>State law provides that no person shall, on the basis of race, national origin, ethnic group identification, and other protected classes, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state. (Gov. Code § 11135). Furthermore, the state's Fair Employment and Housing Act</p>	<p>Comment noted. We further note that the requirements of the General WDRs to report field-level AR values and to sample on-farm drinking water wells will help ensure that authorized waste discharges do not disproportionately impact or discriminate against Latino or low-income communities or deny their enjoyment of their residences, property, or tenancy.</p>

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	<p>guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color, or national origin. (Gov. Code § 12900 et seq.)</p> <p>We work with many small majority-Latino communities and mobile home parks within the Coachella Valley that are disproportionately impacted by poor water quality. Statewide, Latinos are more likely to have higher levels of nitrates in their drinking water than the population at large.⁷ Moreover, Latino and low-income communities are less likely to have access to adequate healthcare, water treatment, and substitute water sources, which further aggravates these disparate impacts.⁸ As groundwater quality degradation allowed by the General WDRs is likely to have disparate negative impacts on protected classes, the Regional Board must do more to prevent degradation and ensure that dischargers provide replacement water and long-term solutions, including groundwater quality restoration.</p>	